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Supreme Court of the United States

OCTOBER TERM, 1958

No. 278

AARON D. FRANK, APPELLANT,

vs.

STATE OF MARYLAND.

APPEAL FROM THE CRIMINAL COURT OF BALTIMORE,
STATE OF MARYLAND

FILED AUGUST 15, 1958
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SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE CRIMINAL COURT OF BALTIMORE,
STATE OF MARYLAND

DOCKET ENTRIES

STATE OF MARYLAND,

vs.

AARON DAVID FRANK

Appeal Docket 1958.

January Term.

Number 103.

March 6, 1958	Appeal Certificate from the Northern District of Baltimore City—filed. Traverser tried and found Guilty by Magistrate Henry L. Rogers, on March 6th, 1958 and fined $20.00 and costs $1.70.
Charge:	Violation of Section 120 of Article 12 at Baltimore City, Code in that a nuisance is suspended at premises 4335 Reisterstown Road, owned by Aaron Frank, consisted of rat infestation, undue trash and debris and said Aaron Frank has refused entry to said premises to said W. H. Gentry.
Prosecuting Witness	Officer Francis Johnson, Northern District and W. H. Gentry, 202 Guilford Avenue.
Appearance of	Benjamin Lipsitz, Esquire, filed.
March 17, 1958	Arraigned and pleads Not Guilty.
March 17, 1958	Verdict: Guilty.
March 17, 1958	Fined $20.00 and costs—Oppenheimer, Judge. ($20.00 paid in Northern District).

March 17, 1958	Stipulation filed.
March 17, 1958	Motion to dismiss filed and Denied—Oppenheimer, Judge.
March 17, 1958	Motion for Verdict of Not Guilty filed and Denied—Oppenheimer, Judge.
March 17, 1958	Court costs of $15.50 paid Sheriff.
June 16, 1958	Notice of Appeal to the Supreme Court of the United States filed.
June 25, 1958	1. Petition for Writ of Certiorari to the Criminal Court of Baltimore with endorsement thereon, of disposition of said Petition.
	2. Answer to Petition for Writ of Certiorari.
	[fol. 2] 3. Copy of letter addressed to Benjamin Lipsitz, Esquire, dated April 28, 1958 advising the disposition in the Court of Appeals of the Petition of Writ of Certiorari;
June 25, 1958	Transcript of Testimony filed. Transcript Number 1591.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 3]

IN THE MAGISTRATE'S COURT FOR THE NORTHERN DISTRICT OF BALTIMORE, MARYLAND

COMMITMENT—March 6, 1958

29—P.B.

Commitment to Jail, (in Default of Fine)

State of Maryland, City of Baltimore, to wit:

To the Warden of the Baltimore City Jail, Greeting:

Whereas, Aaron David Frank, wh. age 50, herein called the Traverser, after having been informed by me of his

right to have a trial by jury on the charge hereinafter mentioned, preferred against the Traverser on the oath of W. H. Gentry and having thereupon declared that he wished to waive his said right to a trial by jury, and abide by the determination, of said charge by me, and the State's Attorney for the City of Baltimore not having, before the trial of said offense, prayed a jury trial on behalf of the State of Maryland; was, thereupon, on this 6th day of March, 1958, duly tried before the undersigned, a Justice of the Peace of the State of Maryland in and for the City aforesaid, duly selected to sit at the Northern Police Station House, upon the charge of, and was therupon (sic) on said trial found guilty of the offense of Viol. of Sec. 120 of Art. 12 at Balto. City Code in that a nuisance is suspected at premises 4335 Reisterstown Road, owned by Aaron Frank, consisted of rat infestation, undue trash and debris and said Aaron Frank has refused entry to said premises to said W. H. Gentry, on or about the 27th day of February, 1958, in Baltimore City, State of Maryland, and it was thereupon adjudged that the said Traverser for the said offense should pay a fine of $20.00 and $1.70 cents costs; and it was further adjudged that if the said sum should not be paid forthwith, the said Traverser should be imprisoned in the Baltimore City Jail, until such payment be made or until the said Traverser should be discharged by due course of law; and

Whereas, the said Traverser has not paid the said fine and costs, or any part thereof, byt (sic) therein has made [fol. 4] default. Now, Therefore, you are hereby commanded to receive from any officer the body of the said Traverser and he safely in your jail and custody until the said fine and costs shall have been paid or until the said Traverser shall be thence discharged by due course of law. Given under my hand and seal this 6th day of March 1958.

(Signed) Henry L. Rogers, J.P. (Seal), Police Justice for Northern District.

Fine Has Been Paid. Defendant Has Been Released

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 5]

IN THE MAGISTRATE'S COURT FOR THE NORTHERN DISTRICT, POLICE COURT

STATE OF MARYLAND

vs.

AARON D. FRANK

NOTICE OF APPEAL—March 6, 1958

Mr. Clerk:

Please enter an Appeal in the above-entitled matter to the Criminal Court of Baltimore.

(Signed) Benjamin Lipsitz, Attorney for defendant.

Endorsed thereon, as follows: Appeal noted March 6, 1958, Henry L. Rogers, Magistrate.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 8] [File endorsement omitted]

IN THE CRIMINAL COURT, PART II OF BALTIMORE

Appeal #103/1958

STATE OF MARYLAND

vs.

AARON DAVID FRANK

Before Judge Reuben Oppenheimer.

Transcript of Testimony, March 17, 1958— Filed June 25, 1958

Appearances

Counsel Present:

Norman Polski, Assistant State's Attorney, for the State.

Benjamin Lipsitz, Esq., for the Defendant.

Mr. Lipsitz: Before we plead, since there is no indictment or any information in this case, I would like to have the charge read into the record and taken down by the Reporter. Will you read the charge, please, Mr. Clerk?

The Clerk: In Appeal #103 of the docket of 1958, the State charges violation of Section 120 of Article 12 of the Baltimore City Code in that a nuisance is suspected at premises 4335 Reisterstown Road, owned by Aaron Frank, consisting of rat infestation, undue trash and debris, and [fol. 9] said Aaron Frank has refused entry to said premises to said W. H. Gentry—I suppose he is an inspector of the Health Department——

Mr. Lipsitz: I believe so.

The Clerk: On the 27th of February, 1958.

Mr. Lipsitz: Before we plead, while I am aware of the Givner case and while the Court may be reluctant to decide constitutional questions in the abstract, I wish to make a motion to dismiss the charge, on constitutional grounds, in open court and I shall file a written motion to dismiss.

The motion goes on the grounds that Section 120 of Article 12 of the Baltimore City Code is repugnant to the 23rd and 26th Articles of the Declaration of Rights of the Constitution of Maryland and is repugnant to the Fourth and Fourteenth Amendments of the Constitution of the United States in that it deprives the defendant of his right to be secure from unreasonable searches and seizures and subjects him to such searches and seizures, and, further, to unlawful tresspasses (sic) on his property and to a wrongful taking there of. We have a written motion that we have filed. I am giving a copy to the State.

The Court: I shall defer ruling until I have heard the testimony.

[fol. 10] Mr. Lipsitz: The plea is not guilty, court trial.

Thereupon:

WILLIAM HOWARD GENTRY, a witness of lawful age, produced on behalf of the State, having been first duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q. Give the Court your name.
A. William Howard Gentry.
Q. And your official position?
A. I am a Sanitarian of the Baltimore City Health Department.

Direct examination.

By Mr. Polski:

Q. I direct your attention to February 27, 1958. Did you have occasion to go to 4335 Reisterstown Road with reference to an investigation of those premises?
A. I did.
Q. Tell the Court what you noticed when you got there and what happened next.

The Court: Before you tell me that, why did you have occasion to go to those premises?

[fol. 11] The Witness: On February 26th, we had a complaint from a neighbor in the 4300 block where the defendant lives. She complained of rats in her basement.

Mr. Lipsitz: Objected to. I move to strike out what the neighbor said.

The Court: I will strike out the testimony as to what the neighbor said but permit to remain in the fact that there was a complaint from the neighbor as to rats in her basement. That was the complaint?

The Witness: Yes sir.

The Court: But strike out what the neighbor said.

Q. Then what happened?

A. On inspection of the complainant's cellar, we found that she had rat proofed her cellar all the way around, closed all openings in the concrete.

The Court: In the complainant's cellar.

The Witness: In the complainant's cellar.

Mr. Lipsitz: We object and move to strike. It does not seem relevant, what the neighbor did.

The Court: Is this part of the inspection of the neighborhood that you made?

The Witness: Yes sir.

[fol. 12] The Court: Motion denied.

The Witness: In the process of rat proofing the cellar, she trapped a rat in her basement.

Mr. Lipsitz: Objected to. He hasn't connected the neighbor's house with this house.

The Court: Is this part of the general inspection of the neighborhood that you made?

The Witness: The complainant informed me they figured the rats were coming from the corner house.

Mr. Lipsitz: Objected to. We move to strike.

The Court: Motion granted. You did receive a complaint as to rats in this immediate neighborhood?

The Witness: Yes sir.

The Court: As a result of the complaint, did you or not make an inspection of the houses in the vicinity?

The Witness: Yes sir.

The Court: Was that part of your official duties?

The Witness: Yes sir.

Q. One of the houses you inspected, was that #4335 Reisterstown Road, the house of the defendant?

A. Yes sir.

Q. What happened when you got to #4335 Reisterstown Road?

The Court: That is the house of the defendant.

[fol. 13] Mr. Polski: Yes sir.

The Witness: We first knocked on the door to get the attention of the occupant. After knocking on the door and getting no response, we proceeded to inspect the outside of the premises.

Around the area of the front porch, there was considerable debris, dirt, and trash, and openings underneath the front porch.

Around the side of the house——

The Court: Are there steps going up to the house?

The Witness: Yes sir. I have pictures that were taken.

Q. Were they taken while you were there?

A. They were taken on the 7th of March, after——

The Court: When did you make the inspection?

The Witness: On the 27th of February.

Mr. Lipsitz: We object to the pictures.

Q. Were you there when the pictures were taken?

A. Yes sir.

Q. You went back on the 7th?

A. Yes sir.

Q. The pictures taken on the 7th of March, do they [fol. 14] depict the same condition you saw on the 27th of February?

A. Exactly.

OFFER IN EVIDENCE

Mr. Polski: Your Honor, we offer the pictures.

Mr. Lipsitz: Objected to.

The Court: Overruled.

Q. Produce the pictures.

(Thereupon, the witness produced a group of photographs.)

Q. Who took these pictures (indicating)?

A. I took them in company with Mr. Charles Carroll, another sanitarian.

Q. Is he in court today?

A. He is in court today.

Q. Describe these pictures——

Mr. Lipsitz: Objected to.

The Court: The pictures speak for themselves I think.

Mr. Lipsitz: How many are there, Mr. Bailiff?

The Bailiff: There are eight pictures.

(Thereupon, the pictures just offered in evidence were passed up to the Court for its inspection.)

The Court: These are all of the front of the house?
[fol. 15] The Witness: Those are of the front steps and the rear of the house. You can see a long view from the alley.

Q. Going back to February 27th, what did you see when you went to the house? What was the condition you saw?
A. The condition of the house was an extreme state of decay. The rear of the porch, the foundation, were coming away. There was a deep pit under the rear porch and an oil tank. There were concrete blocks, debris and trash. On the north side of the house, there was a cellar opening. It had been partially boarded up.

The Court: Is it a row house?
The Witness: It is a detached, frame house; completely detached.
The opening in the side of the cellar where they had tried to board it up was about six by six inches.
The shutters on the residence were nailed. You could see the nails from the side.
In the rear of the house, there was a pile, later identified as rodent feces mixed with straw and trash and debris to approximately half a ton.
The appearance of the feces led me to believe it was rodent feces, probably chinchilla. The defendant told me [fol. 16] he had been raising chinchillas but some children had stolen them.

Q. After finding those conditions on the outside, what did you do?
A. While we were inspecting the rear of the premises, the defendant came around the side. I did not know his name at the time.
He said: "What are you doing on my property?" I said that we were from the Health Department and we are inspecting your premises for rats and that we had found considerable evidence of recent rodent infestation. I asked the defendant would he permit us to inspect his basement area for rats. He denied us entrance.

I then showed him my identification and read him Section 6, Article 12 of the Baltimore City Code and he informed me he had plenty of money and he did not mind paying a fine.

Q. What is that section you referred to?

The Court: Yes, that has to be offered in evidence.

OFFER IN EVIDENCE

Mr. Polski: We offer it in evidence.

The Witness: Section 6——

Mr. Polski: That is not the section he is indicted under [fol. 17] this morning. He is indicted under Section 120. We offer that.

Mr. Lipsitz: No objection. I will ask the State's Attorney if he will not stipulate to the inclusion of the entire Article 12 in the record.

The Court: Yes, that is by agreement of counsel.

Mr. Lipsitz: I have drawn up a stipulation, the entire Article 12 and certain sections of the Charter of Baltimore City in order to make the record complete.

The Court: Any objection?

Mr. Polski: No sir.

The Court: You may read the section.

Mr. Polski: The Section he read to the defendant says: "If any person shall knowingly obstruct or resist the Commissioner of Health, or any person by him appointed, in the execution of the powers to them given, or in the performance of the duties enjoined on them by this or any other Ordinance in relation to the public health, such person shall forfeit and pay a sum not exceeding $200.00."

Q. Was any mention made at the time of this Section 120?

A. No.

Q. What happened after that?

[fol. 18] A. The following day, February 28th, after I had gotten in touch with the sanitary police, Officer McAllister, he suggested that I go out in company with Officer Curlotta and Officer Bridenbach and see if we could not gain entrance by arbitration.

Mr. Lipsitz: Objected to and we move to strike.

The Court: Sustained. What happened?

The Witness: In the company of Officer Bridenbach and Officer Curlotta, we went to the defendant's residence on February 28th.

The Court: About what time of the day did you go there?

The Witness: About eleven o'clock in the morning, to see if we could, through arbitration, gain entrance to inspect. No one answered the door. I proceeded to reinspect the premises in the company of Officer Bridenbach and Officer Curlotta.

The Court: You mean the exterior?

The Witness: Yes sir.

Q. What happened.

A. We felt the only thing to do in that case was to have the defendant in court under Section 120 of Article 12 so [fol. 19] that maybe the Judge could convince him to let us into his residence.

Mr. Lipsitz: I object to that part of the witness's answer as to what the Judge might do.

The Court: Sustained.

Q. You are referring to Section 120: "Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the daytime, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars."?

A. That is right.

Q. Was Mr. Frank summoned into Court?

A. He was.

Q. Were you present at the time of the court trial?

A. Yes sir.

The Court: What court do you mean?

The Witness: The Magistrate's court at the Northern Police Station, Magistrate Rogers.

Mr. Polski: I have no further questions.

The Court: You did not go into the house?

[fol. 20] The Witness: I have not made an inside inspection.

Cross examination.

By Mr. Lipsitz:

Q. How long have you been a Health Department Sanitarian?

A. One year.

Q. Do you work for a particular division or department?

A. I am connected with the Bureau of Rodent Control.

Q. You referred to "we" inspected when you testified. With regard to the first inspection, who was with you that day?

A. We are now in the process of training multiple dwelling inspectors. I had inspectors Crane and Harberg, who are now multiple dwelling inspectors, with me.

Q. Were they both present when you spoke with Mr. Frank?

A. Yes.

Q. What time of the day did you make that first inspection, which was on February 27th?

A. About two thirty, between two and two thirty in the afternoon.

Q. What was the name of the person who made the complaint that led you to make this inspection?

A. We do not have to give that information.

[fol. 21] Mr. Polski: I would object any way. I don't believe it is relevant.

The Court: I sustain the objection as to any conversation with the person who made the complaint.

Mr. Lipsitz: I am asking the identity of the person making the complaint. I think it might be material.

Mr. Polski: Objected to.

The Court: There is already testimony as to a complaint of rodents in the neighborhood. I think the witness gave the address of the person who made the complaint. I see no objection to giving the name as well. You may give the name. It goes to whether or not there was reasonable cause to suspect that a nuisance existed.

The Witness: Mrs. Sonnenborn, 4319 Reisterstown Road. She is in a very highly nervous state.

The Court: Strike that.

Q. How far is 4319 Reisterstown Road from the defendant's house?

A. About eight houses, about three hundred feet.

Q. You have testified about the exterior appearance of this house. You have mentioned certain structural defects.

A. That is right.

[fol. 22] Q. Structural defects are not your concern as a Health Department Inspector, are they?

A. Where they relate to the harborage of rodents and their possible entry into promises (sic) they are.

Q. You said the porch was falling down?

A. The accumulation of debris from the falling porch had also fallen under the porch which constitutes a rodent harborage.

Q. Did you make a report to the health division?

A. Rodent Control is primarily concerned with structural defects that will permit rodent harborage in the exterior or interior of buildings. The notice we send takes in all physical defects.

Q. Did you make a report to the buildings inspection department?

A. I did not.

The Court: You may give the reason, if you wish.

Mr. Lipsitz: I think he has already.

Q. You didn't see any trash or debris inside?

A. I have not been inside the premises.

Q. Then the answer is?

A. No.

[fol. 23] Q. Thank you. As to the outside of the house, you mentioned a pile of rodent feces and straw.

A. Yes sir.

Q. How long were you on the premises on the day of your first inspection?

A. About twenty-five minutes.

Q. You made a careful examination of the outside of the premises?

A. From the outside of the premises, everything was so apparent that a minute inspection was unnecessary because violations existed.

Q. Did you notice Mr. Frank's flower bed in the rear yard?

A. I noticed no flower bed. There were some bushes.

Q. Didn't Mr. Frank complain about prowlers having pulled flowers from his flower bed?

A. No.

Q. Are you familiar with a compost pile?

A. Yes.

Q. Wasn't this pile, in fact, such a compost pile?

A. The outward appearance or evidence did not indicate a compost pile. There were tin cans, bottles, and paper bags.

[fol. 24] Q. There was also straw and leaves?

A. Straw and debris and feces. From the shape and color I surmize (sic) they were some rodent feces of some kind.

Q. It is not against a Health Department rule to have a compost pile, is it?

A. Not unless it constitutes a nuisance.

Q. If a nuisance exists on the outside of the premises is it part of your duties to serve a notice for that?

A. Yes.

Q. Did you serve notice on Mr. Frank for any nuisance you found on the outside on February 27th?

A. I sent Mr. Frank a notice. We only have one stenographer. The notice was sent on March 13th.

Q. That was after the trial in the Magistrate's court?

A. It was.

Q. This compost pile was a good distance from the house.

The Court: That is a question?

Q. This pile that you have described was a good distance from the house, wasn't it?

A. About thirty feet.

The Court: About how large is the lot?

[fol. 25] The Witness: About forty feet deep.

The Court: How wide is it on Reisterstown Road?

The Witness: I would say about eighty-five or one hundred feet.

Mr. Lipsitz: We will stipulate—the defendant tells me the lot is fifty feet by one hundred and thirty-seven feet; fifty feet on Reisterstown Road, north and south, and one hundred and thirty-seven feet in depth, east and west towards Park Heights Avenue.

Q. The notice you have served on Mr. Frank for debris outside does that refer specifically to this pile?

A. I have it with me in my case.

The Court: That is the best evidence. You are calling for the production of the copy?

Mr. Lipsitz: I would like to see it before the witness testifies.

The Court: Yes.

(Thereupon, the witness handed Mr. Lipsitz a paper for his examination.)

Q. What is the answer to the question?

A. Yes.

The Court: Are you putting this copy of the notice [fol. 26] in evidence?

Mr. Lipsitz: I am not inclined to. If the State does later, I have no objection to it. I wanted that one point from the witness. He consulted the notice for that purpose.

The Court: Read it.

The Witness: "Mr. Aron Frank, 4335 Reisterstown Road, Baltimore 8 Maryland. Mr. Frank, owner, 4335 Reisterstown Road:

"1. Clean and remove all trash and debris from the yard and maintain same in a clean and sanitary condition at all times.

"2. Remove all trash and debris from under front and rear porches.

"3. Surface the yard area, including the side yard, to a distance of at least ten feet from the rear foundation wall with four inches of concrete.

"4. Provide all cellar windows with framed, removable, screens of galvanized hardware cloth of one quarter inch

mesh, of such construction the hardware cloth extends to outer edge of the frame.

"5. Provide proper regulation galvanized metal garbage [fol. 27] containers with tight-fitting metal lids which are to be kept on the containers at all times.

"6. Eliminate rats from the premises by trapping or poisoning."

Q. You have testified that this pile consisted in part of rodent feces.

A. I did.

Q. Would you say it consisted chiefly of rodent feces or other material?

A. I would say it was mixed with straw and other material. How much was feces, I could not determine.

Q. Can you specifically identify what kind of rodent feces you say was on the pile?

A. From the conversation with Mr. Frank—a chincillla (sic) is a rodent. It is seventeen inches long approximately with a six inch tail. The feces of chincillas (sic) are about the same shape as rat feces. Chinchillas feed off pellets and grass. The feces were green, of the same shape as rodent feces.

Q. Were they rat feces?

A. Rodent.

Q. Were they rat feces—specify.

A. I specify they were rodent.

[fol. 28] Q. They might have been chinchilla feces.

A. They might possibly.

Q. When you testified in the Magistrate's court, when you were cross examined on what kind of feces they were, you said you only supposed they were rat feces.

A. I said they were rodent feces.

Q. When cross examined, didn't you ultimately state it was just a supposition on your part that they were rat feces?

A. I said rodent.

Q. They could just as well be chinchilla as rat feces?

A. Rodent.

Mr. Lipsitz: Will your Honor ask him to answer?

The Court: Is not a chinchilla a rodent?

The Witness: Yes sir.

The Court: Is there any different (sic) from a health aspect between rodents which are rats and rodents which are chinchillas?

The Witness: If they maintain a nuisance—if he could be raising chinchillas in the place to such a degree that they are attracting rats in the neighborhood, they constitute a nuisance.

Q. Did you in your complaint made when you got the [fol. 29] warrant for the defendant's arrest charge him in that with chinchilla infestation?

A. I charged him with nothing except refusing us entry to inspect the premises.

Q. On the grounds that you had cause to suspect rat infestation?

A. Rodent infestation.

Mr. Lipsitz: May I see the committment? (sic)

(Thereupon, the Bailiff handed a paper to Mr. Lipsitz.)

Q. I am reading to you from the Magistrate's committment:—(sic) "Violation of Section 120 of Article 12 at Baltimore City Code in that a nuisance is suspected at premises 4335 Reisterstown Road, owned by Aaron Frank, consisted of rat infestation, undue trash and debris and said Aaron Frank has refused entry to said premises to said W. H. Gentry". You did not charge him with any chinchilla infestation.

A. At the time it was suspected there were inside rodents. It could be rat infestation.

Mr. Lipsitz: Your Honor, I contemplate contending with the State's Attorney but not the witness.

The Court: The document for which you have called [fol. 30] speaks for itself in any case. You have asked the witness to interpret.

Mr. Lipsitz: I am trying to get the witness to specify what kind of feces he claims to have seen. In the warrant, he claims to have suspected rat infestation.

The Court: The wording is "that a nuisance is suspected at premises 4335 Reisterstown Road, owned by Aaron Frank, consisting of rat infestation, undue trash and debris . . . ". It speaks for itself.

Q. You will not swear that these feces are rat feces?

Mr. Polski: Objected to.
The Court: Sustained.

Q. How many rats did you suspect from your inspection lived in this house?

Mr. Polski: Objected to.
The Court: Sustained.

Q. "Infest," I conceive means a large number of rats. Do you agree?

Mr. Polski: Objected to.
The Court: Sustained.

Q. I will read you Webster's definition of "infest." This is Webster's Collegiate Dictionary, Fifth edition. "Infest, [fol. 31] a verb, transitive—to trouble greatly by numbers or by frequency of presence; to assail persistently and in numbers." Do you agree with that?

Mr. Polski: Objected to.
The Court: Sustained.

Q. How many rats did you see when you inspected this property of March 27th?

Mr. Polski: Objected to.
The Court: If you want that—overruled.
The Witness: None.

Q. How many rat holes did you see—and I believe that February 27th is the date, not March 27th—how many rat holes did you see on that day?

Mr. Polski: Objected to. He can say there were holes and assume they were rat holes.
The Court: The witness may answer and explain.
The Witness: On my inspection, I found several entrances to the interior of the dwelling.

The Court: You do not mean human entrances?

The Witness: Openings into the dwelling that could be used by rodents.

Q. Will you swear that you observed any rat holes?

[fol. 32] Mr. Polski: Objected to.

The Court: Sustained.

Q. Did you not in the Magistrate's court testify on cross examination that you had seen no rat holes at all?

A. You cannot define a rat hole as an opening.

The Court: The question is what you testified to on that point before the Magistrate.

Q. Did you not before the Magistrate testify on cross examination that you had seen no rat holes on the day of your first inspection?

A. Yes.

Q. Thank you. Did you have a search warrant when you went to these premises?

A. I did not.

Q. Did not Mr. Frank say to you that he would let you in his house if you had a search warrant?

A. He informed me that "you will have to get a search warrant if you want to get in this house."

Q. Thank you.

Q. Was there any immediate emergency confronting you as to getting into this house? Yes or no.

A. Yes.

[fol. 33] Q. State what it was.

A. May I address the Court on this?

The Court: Yes, you are asked to explain your answer.

The Witness: In the pursuance of my duties, I have a very large territory. The fall and summer months are our heaviest which means travelling all around the neighborhood. Complaints are our main source of information.

When finding a situation as I found, it is our duty to clean up the situation as early as possible to prevent further infestation of the neighborhood. We can only do that by a thorough inspection.

Q. Could you not just as well have gone into the house one hour or two hours later as at the time you demanded entry?

A. The defendant refused entry.

Q. I didn't ask you that. Could you not just as well have made your inspection one hour or two hours later than at the time you demanded entry?

A. I could not. I had two students I had to release at three o'clock. I have to be in the office at three thirty every day to take care of my reports.

Q. You had no knowledge of the condition of this house [fol. 34] until a neighbor called it to your attention?

A. It is a rule when we inspect a neighborhood to inspect the adjacent houses to the area where you find rodents may be harboring.

The Court: Repeat the question.

(Thereupon, the Reporter repeated the question:—"Q. You had no knowledge of the condition of this house until a neighbor called it to your attention?")

The Witness: In my territory, I have passed by Reisterstown Road several times——

The Court: This part of Reisterstown Road or some other part?

The Witness: This part. I was under the impression it was a vacant dwelling. I was snowed under in work.

Q. Was the emergency then an emergency in your work?

A. Rodent infestation is always an emergency.

Q. You did not notice this emergency on your prior trips passed (sic) this house?

A. I did not stop.

Q. What other houses in the neighborhood did you inspect after you got this complaint on February 27th?

Mr. Polski: Objected to.

[fol. 35] The Court: Overruled.

The Witness: 4319 and 4325 or 4327.

The Court: What?

The Witness: 4319——

Q. You inspected three houses?

A. Two houses, it was either 4325 or 4327.

Q. You inspected the house where you got the complaint about Mr. Frank's house?

A. Yes.

Q. And you inspected Mr. Frank's house?

A. And another house.

Q. What was the address of the other house?

A. Either 4325 or 4327.

Q. How many houses are there in that block?

A. About eight.

Q. Did you not, as a matter of fact, in your testimony in the Magistrate's court state on your cross examination that there was no emergency present when you demanded your entry?

A. I did not.

Q. You had ample time, did you not, to go and get a search warrant if you so chose before making your inspection?

[fol. 36] Mr. Polski: Objected to.

The Court: Sustained. We have been over this.

Q. I suggest to you that you could just as well have made your inspection later the same day or some other day, is that not so?

Mr. Polski: Objected to.

The Court: Overruled.

The Witness: We have complaints every day. We have to take care of complaints as they come in.

Q. You came back the following day?

A. I did.

Q. So you could just as well have made your inspection on the second trip?

A. In company with Officer Bridenbach and Officer Curlotta, we made another inspection, tried to see the defendant, but we were unable to get in the door. We made another inspection. I wanted some witnesses.

Q. As a matter of fact, did you fail to apply for a search warrant because you figured the Magistrate might not issue it?

Mr. Polski: Objected to.
The Court: Sustained.

[fol. 37] Q. Tell me your reason for not applying for a search warrant in this instance.

Mr. Polski: Objected to.
The Court: Sustained.

Q. Did you swear out the warrant on which the defendant was arrested?
A. I did.
Q. Before whom?
A. Magistrate Levin.

The Court: Give the full name.
Mr. Lipsitz: Marshall A. Levin.
The Witness: Of the Housing Court. He was taken over at the Northern that afternoon at four o'clock.

Q. Are you familiar with Section 120 of Article 12 of the Baltimore City Code, 1950 edition?
A. Yes.
Q. Will you tell us what part of that section gives the right to have this defendant arrested?

Mr. Polski: Objected to.
The Court: Sustained.

Q. Were you present when the arrest was made?
A. No.

[fol. 38] Mr. Lipsitz: That is all.

(Testimony of witness concluded.)

Mr. Polski: Your Honor, counsel has given me this stipulation which I cannot sign because it goes beyond Article 12 and includes Section 6 of the Charter and specifically four separate paragraphs which I do not have before me.

Mr. Lipsitz: I believe we can look at those sections and counsel can agree or disagree. I may say these are the sections of the City Charter referred to by Judge Brune in the opinion in the Givner case. I exclude the regulations

which apply only to the Fire Department, etc. These set out the Health Department aspect of it.

Mr. Polski: I don't see where Section 6 would be in this book.

Mr. Lipsitz: Maybe I can find it for you.

Mr. Polski: That will be very nice.

Mr. Lipsitz: I am reading from the Baltimore City Charter, Flack's 1949 edition, Section 6 "General Powers." Shall I read them into the record?

The Court: I don't believe that is necessary.

Mr. Polski: Paragraph 1, 11, 5, and 24.

[fol. 39] Mr. Lipsitz: Paragraph 1 is about general powers. Paragraph 5 is entry on private property. Paragraph 11 is health and nuisance. Paragraph 24, I believe, delegates police power.

Mr. Polski: In addition it will be all of Article 12.

Mr. Lipsitz: Which is the health article of the Baltimore City Code.

Mr. Polski: I have no objection.

Mr. Lipsitz: Will you sign the stipulation.

(Thereupon, Mr. Polski signed the stipulation.)

The Court: Have you any other witnesses, Mr. Polski?

Mr. Polski: No sir.

Mr. Lipsitz: Your Honor, I would now like to make a motion both in open court and in writing for a verdict of not guilty.

The motion is on the constitutional ground that Section 120 of Article 12 of the Baltimore City Code denies to the defendant his right to be secure from unreasonable searches and seizures and/or from unlawful tresspass (sic) of his property and/or a wrongful taking of his property, all in violation of both the 23rd and 26th Articles of the Declaration of Rights of the Maryland Constitution and of the Fourth and Fourteenth Amendments of the Federal [fol. 40] Constitution. The said section is repugnant to each and all of the said Articles and Amendments and is, therefore, invalid.

(Thereupon, Mr. Lipsitz made his argument to the Court in support of his motion.)

The Court: I deny your motion to dismiss and your motion for a directed verdict which in essence is a demurrer to the evidence. I think the State has made out a prima facia (sic) case. That motion also is denied.

Mr. Lipsitz: I will call one witness for the sake of the record. I would like to call the arresting officer who is here but the State has not called him. I am not sure of his name. Will you give it to me?

Mr. Polsky: (sic) I don't know it.

Thereupon:

OFFICER FRANCIS WILLIAM JOHNSON, a witness of lawful age, produced on behalf of the Defendant, having been first duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q. Give the Court your name and district.

A. Officer Francis William Johnson, Northern District.

[fol. 41] Direct examination.

By Mr. Lipsitz:

Q. Are you the Officer who arrested Mr. Frank?

A. I arrested the subject at about four twenty-five P. M. on March 5th. That was on a warrant that was handed to me at four o'clock that afternoon.

Q. Who handed you the warrant?

A. My bailiwick Sergeant.

Q. Where was Mr. Frank?

A. Sitting in his automobile in the 2700 block Baldman Avenue.

Q. Did you give him a copy of the warrant?

A. As I testified in the Magistrate's court, there is no copy. It is just the original warrant.

Q. You did not give him a copy of the warrant?

A. No.

Q. Did you read him the warrant before you arrested him?

A. Yes.

Q. At what point did you read him the warrant?

A. After I had asked him if he was Mr. Aaron Frank, I then asked him for some identification to make sure he [fol. 42] was the subject involved. I said I had a warrant for his arrest for the following charge and the warrant read like this——

The Court: Did you read him the warrant?

The Witness: Yes sir.

The Court: The warrant has already been introduced.

Q. Read it.

A. This is a copy of my arrest register with the charge on it.

Mr. Polski: Objected to. I see no reason to read it.

The Court: It does no harm.

Mr. Polski: It prolongs the agony.

The Court: Overruled.

Mr. Polski: Offer the warrant. The Officer is on the stand. Doesn't the warrant speak for itself?

Q. Do you have a copy of the warrant?

A. I have a copy of my arrest register with the charge on it.

Mr. Polski: Where is the original arrest warrant?

The Witness: Probably at the station.

Q. What you are reading is not the actual warrant?

A. This is just the charge on the warrant. This is a [fol. 43] copy of the original arrest register.

Q. That is an exact copy of the warrant?

A. Yes, as to the charge. "Violation of Section 120 of Article 12 at Baltimore City Code in that a nuisance is suspected at premises 4335 Reisterstown Road, owned by Aaron Frank, consisted of rat infestation, undue trash and debris and said Aaron Frank has refused entry to said premises to said W. H. Gentry, in Baltimore City, State of Maryland, on or about the 27th of February, 1958."

Q. You didn't read him the warrant until after you got him in the police car?

A. I read it to him after I asked him if he was Mr. Aaron Frank and if he had any identification. He showed me a Maryland driver's license and also a union card with his name on it.

While we were sitting in the police patrol car to which I am assigned awaiting the arrival of the wagon in the 2700 block Baldman Avenue, it might have been once or two times, but there was one word in there—I will find the word in a minute—"consisted," that was the word. I thought it meant "consisting" and it was "consisted." Mr. Frank also read the warrant at that time. I had handed it [fol. 44] to him. He commended (sic) on that also.

Mr. Lipsitz: Thank you.

Mr. Polski: Step down.

(Testimony of witness concluded.)

Mr. Lipsitz: Your Honor, I renew my motion for a verdict of not guilty and for the sake of protecting the record, I will renew my motion to dismiss.

The Court: Both motions are denied. Is there any further evidence?

Mr. Lipsitz: No sir. The argument would be similar to the argument made in support of the motions. That is all.

VERDICT

The Court: The verdict is guilty. The fine is twenty dollars and costs.

Mr. Lipsitz: Thank you.

[fol. 45]

IN THE CRIMINAL COURT OF BALTIMORE

[Title omitted]

MOTION TO DISMISS AND DENIAL THEREOF—
Filed March 17, 1958

Now comes the defendant, Aaron D. Frank, by Benjamin Lipsitz, his Attroney, (sic) and moves the Court ot (sic) Dismiss the warrant upon which he was arrested and to dismiss the charge laid herein against him, and for reasons says:

1. That the ordinance of the Mayor and City Councis (sic) of Baltimore under which the defendant is charged and for alleged violation of which he was arrested viz., Section 120 of Article 12 of the Baltimore City Code, 1950 Edition (Article 12 is entitled "Health". The sub-title under which Section 120 is codified is "Nuisances and the Prevention of Disease". Section 120 itself is under the sub-heading "Removal of Nuisance",) reading as follows:

> "120. Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the daytime, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars".

on its face denies to the defendant his right to be secure from unreasonable searches and seizures and subjects the defendant to unreasonable searches and/or seizures of his property and/or an unlawful trespass (sic) thereupon and/or a wrongful taking thereof, all in violation both of the 23rd and 26th Articles of the Declaration of Rights of the Constitution of Maryland and of the Fourth and [fol. 46] Fourteenth Amendments to the Constitution of the United States and said ordinance is repugnant to each and all of said Articles and Amendments and is therefore invalid and the arrest of the defendant for alleged violation of said ordinance and the charge made against him

under said ordinance are therefore, unlawful and/or invalid.

2. And for other reasons to be given at the hearing of this motion.

(Signed) Benjamin Lipsitz, Attorney for defendant.

Clerk's Certificate to foregoing paper (omitted in printing).

Endorsed thereon, as follows: Denied Oppenhimer, Judge, 3/17/58.

[fol. 47]

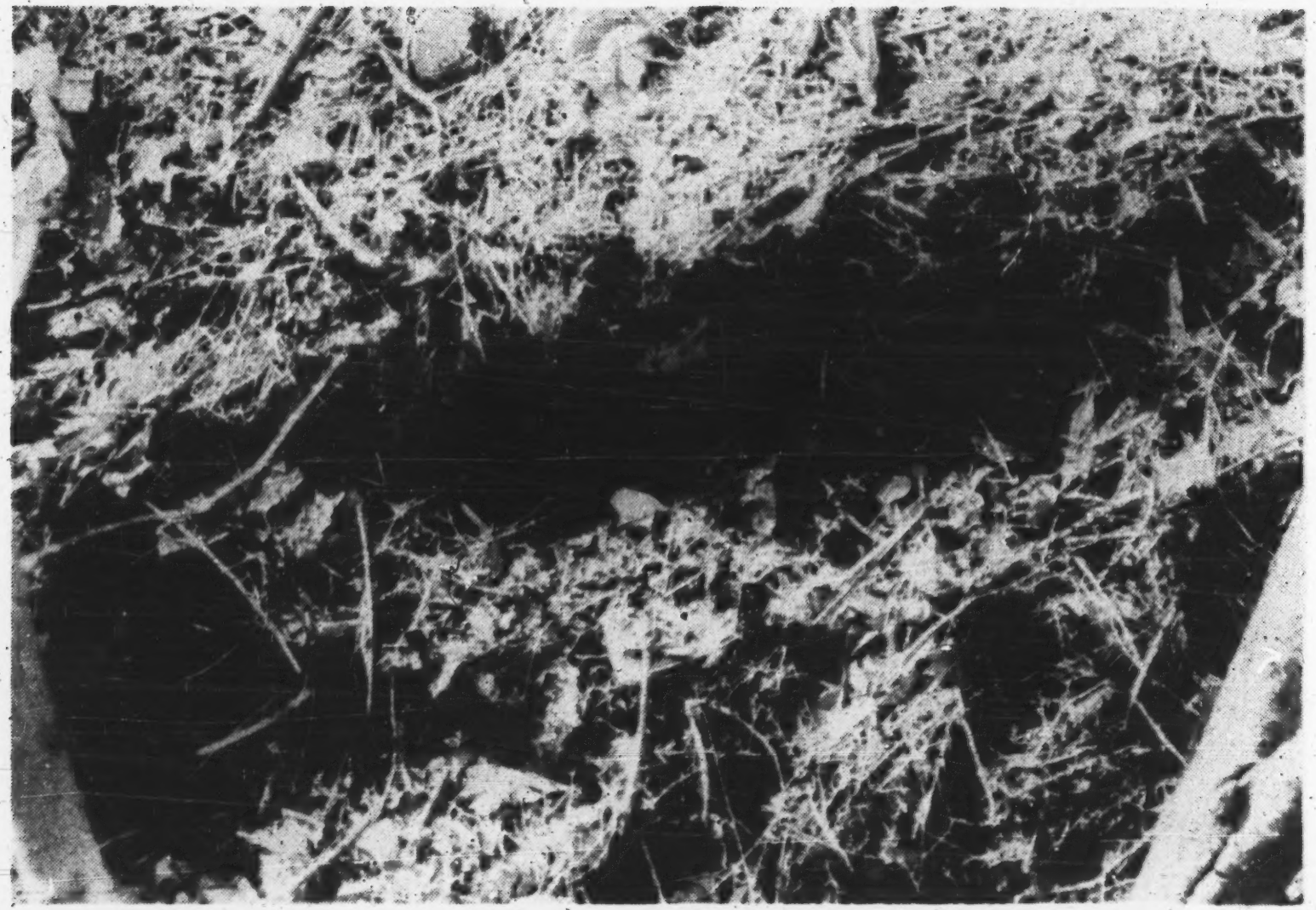
IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

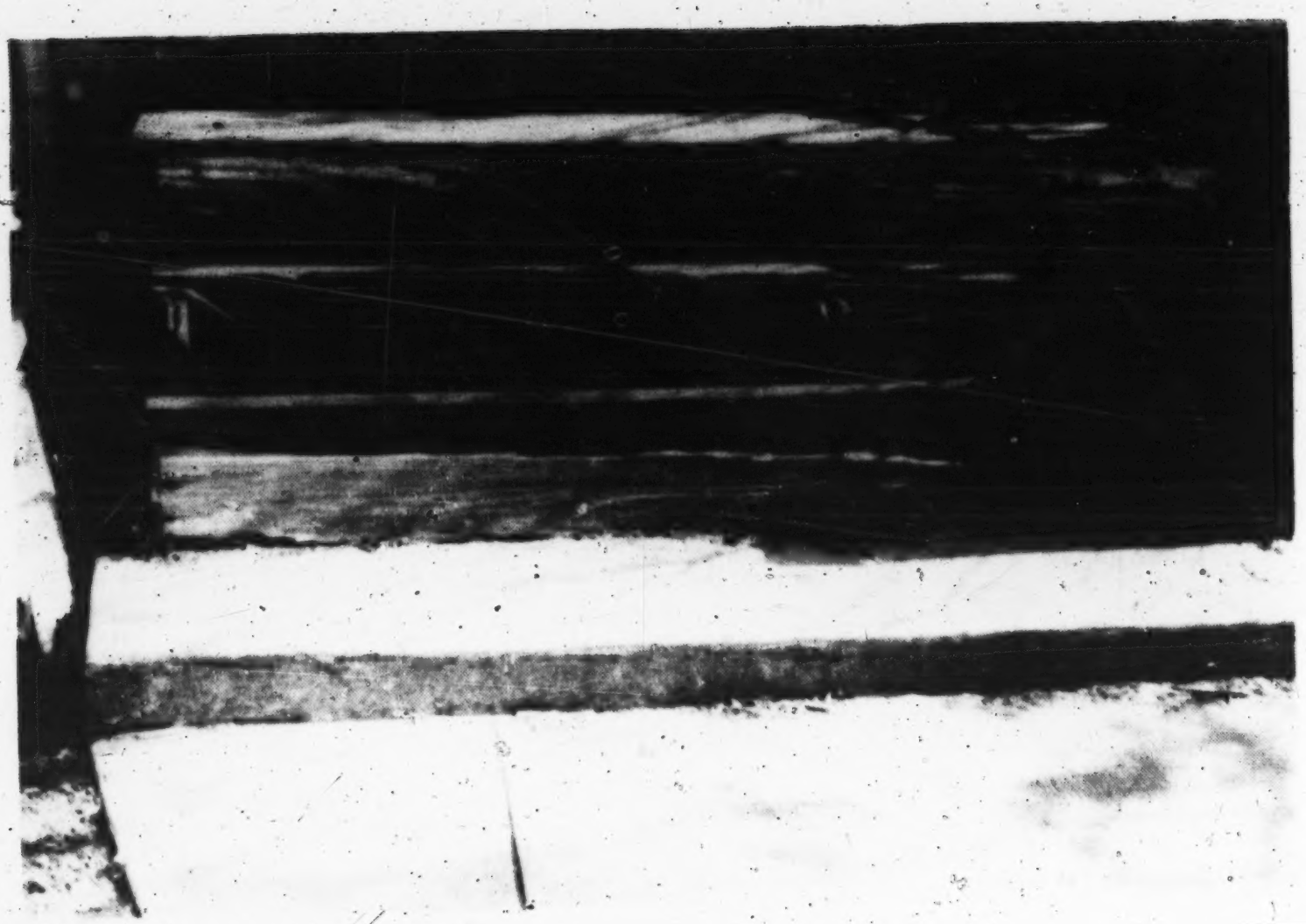
EXHIBITS—Eight photographs introduced in evidence by the State:

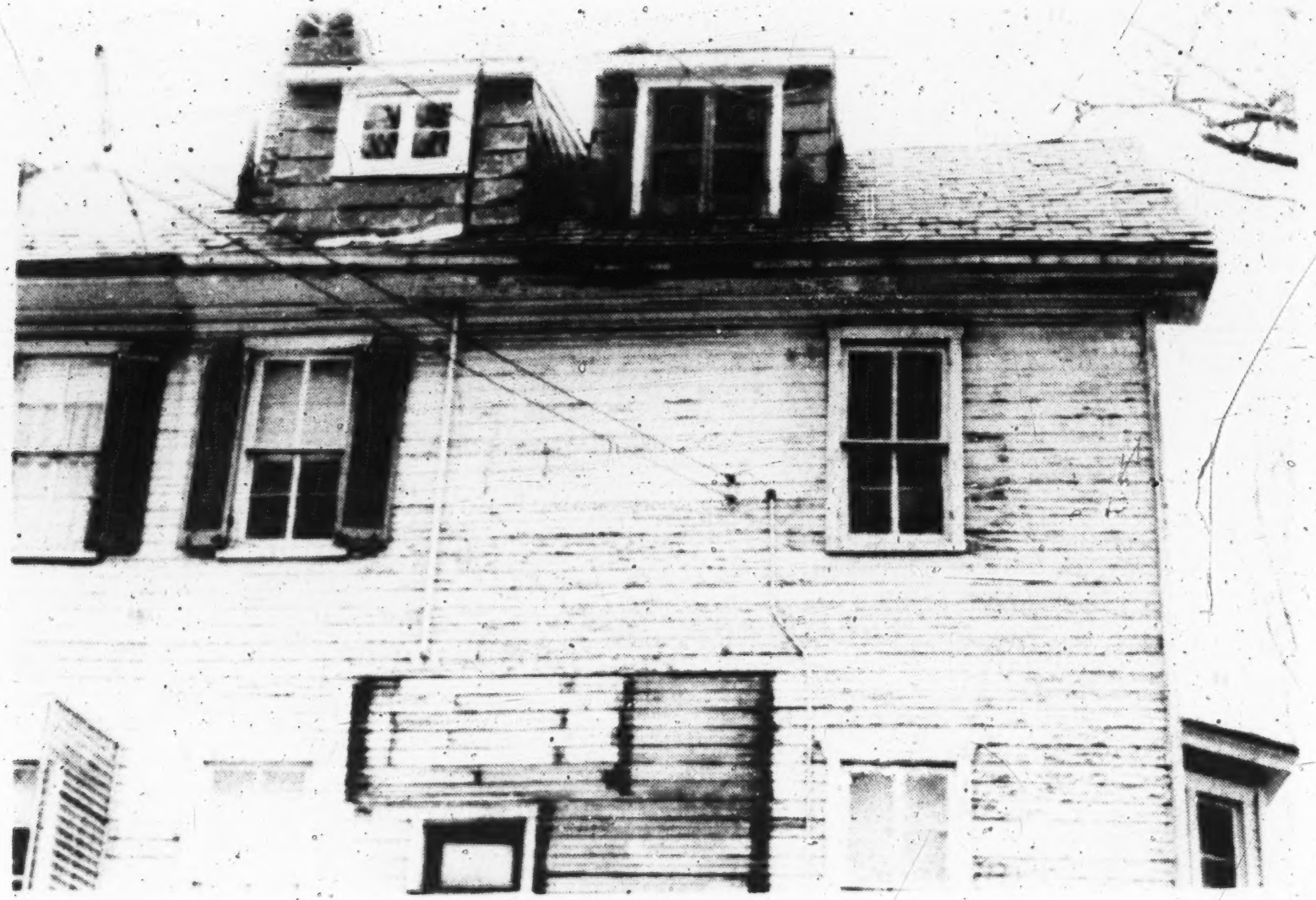
[fol. 47]

(P. 29)

[fol. 48]







MAR • 58

Health Code, "Article 12 of the Baltimore City Code of 1950."

(See Opposite) ☞

NOTE

Page 37 "Baltimore City Code of 1950" is on cards 2 - 3 and 4.

[fol. 155]

IN THE CRIMINAL COURT OF BALTIMORE

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is stipulated and agreed between the State and the defendant that Article 12 of the Baltimore City Code, 1950 Edition, and all ordinances of the Mayor and City Council of Baltimore contained in said Article 12, (and Section 6 of the Charter of the City of Baltimore, Flack's 1949 Edition, and, specifically, Paragraphs (1), (11), (5) and (24) thereof,) be part of the record in this cause as fully as if said Article, ordinances, Section or Paragraphs were read into the record or were formally introduced in evidence.

(Signed) Norman Polski, Assistant State's Attorney for the City of Baltimore.

(Signed) Benjamin Lipsitz, Attorney for Defendant.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 156]

CHARTER AND PUBLIC LOCAL LAWS OF BALTIMORE CITY

(Flack's 1949 Edition)

* * * * * * *

BALTIMORE CITY CHARTER

MAYOR AND CITY COUNCIL OF BALTIMORE

* * * * * * *

GENERAL POWERS.

1898, ch. 123, sec. 6. 1945, ch. 548, sec. 6. 1946, Res. 18, sec. 6.

6. The Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution

of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing, shall have power by ordinance, or such other method as may be provided for in its Charter, subject to the provisions of said Constitution and Public General Laws:

(1) Buildings

P. L. L. (1860), Art. 4, secs. 29, 823, 864, 943. P. L. L. (1888), Art. 4, secs. 121-124. 1892, ch. 10. 1898, ch. 123, sec. 6. 1904, ch. 616. 1906, ch. 797. 1910, ch. 704. City Charter (1915), sec. 6. 1918, sec. 6. 1927, sec. 6. P. L. L. (1930), Art. 4, sec. 6. City Charter (1938), sec. 6(1). 1945, ch. 548, sec. 6(1). 1946, Res. 18, sec. 6(1).

To regulate the location, construction, use, operation, maintenance and removal of buildings and structures, or any part thereof, of every kind.

• • • • • • •

(5) Entry on Private Property

1945, ch. 548, sec. 6(4). 1946, Res. 18, sec. 6(5).

To enter, by its officers or agents, the land or possessions of any person for the purpose of carrying out the powers enumerated in this Section 6.

• • • • • • •

(11) Health and Nuisances

[fol. 157] P. L. L. (1860), Art. 4. sec. 797. 1886, ch. 396. 1890, ch. 509. P. L. L. (1888), Art. 4, secs. 378 and 400. 1898, ch. 123, sec. 6. City Charter (1915), sec. 6. 1918, sec. 6. 1927, sec. 6. P. L. L. (1930), Art. 4, sec. 6. City Charter (1938), sec. 6(9). 1945, ch. 548, sec. 6(10). 1946, Res. 18, sec. 6(11).

To provide for the preservation of the health of all persons within the city; to prevent the introduction of contagious diseases within the city, and within three miles of the same upon land, and within fifteen miles thereof upon the navigable waters leading thereto; and to prevent and remove nuisances.

• • • • • • •

(24) Police Power

P. L. L. (1860), Art. 4, sec. 32. P. L. L. (1888), Art. 4, sec. 721. 1898, ch. 123, sec. 6. City Charter (1915), sec. 6. 1918, sec. 6. 1927, sec. 6. P. L. L. (1930), Art. 4, sec. 6. City Charter (1938), sec. 6(18). 1945, ch. 548, sec. 6(22). 1946, Res. 18, sec. 6(23).

To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise said power within said limits; provided, however, that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner.

* * * * * * *

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 158]

In the Criminal Court of Baltimore

[Title omitted]

Motion for Verdict of "Not Guilty" and Denial Thereof—Filed March 17, 1958

Now comes the defendant, Aaron D. Frank, by Benjamin Lipsitz, his attorney, and moves the Court for a verdict of "not guilty" on the ground that the evidence in this cause is legally insufficient to justify his conviction, in that:

1. Section 120 of Article 12 of the Baltimore City Code, 1950 Edition, denies to the defendant his right to be secure from unreasonable searches and seizures and subjects the defendant to unreasonable searches and seizures of his property and/or an unlawful trespass thereupon and/or a wrongful taking thereof, all in violation both of the 23rd and 26th Articles of the Declaration of Rights of the Maryland Constitution and of the Fourth and Fourteenth Amendments to the Constitution of the United States and said

Section is repugnant to each and all of said Articles and Amendments and is therefore invalid.

2. The evidence in this cause establishes that the defendant was arrested for and is charged with refusing to open his house to an unlawful search and one which would deny him his right to be secure from unreasonable searches and seizures, would constitute an unlawful tresspass (sic) upon his property and/or a wrongful taking thereof, all in violation both of the 23rd and 26th Articles of the Declaration of Rights of the Constitution of Maryland and [fol. 159] of the Fourth and Fourteenth Amendments to the Constitution of the United States.

3. Even if this Honorable Court holds in favor of the validity of the aforesaid Section 120 of Article 12 of the Baltimore City Code, 1950 Edition, the evidence in this cause fails to establish the existence of "cause to suspect that a nuisance exists" in defendant's house, referred to in the evidence, at the time when entry to said house was demanded by the witness William H. Gentry.

4. And for other reasons to be given at the hearing of this motion.

(Signed) Benjamin Lipsitz, Attorney for Defendant.

Clerk's Certificate to foregoing paper (omitted in printing).

Endorsed thereon, as follows: Denied, Oppenheimer, Judge, 3/17/58.

[fol. 160]

IN THE CRIMINAL COURT OF BALTIMORE

Appeal Docket 1958.

January Term.

Number 103.

JUDGMENT—March 6, 1958

March 6, 1958—Appeal Certificate from the Northern District of Baltimore City—filed. Traverser tried and found Guilty by Magistrate Henry L. Rogers, on March 6th, 1958 and fined $20.00 and costs $1.70.

Charge: —Violation of Section 120 of Article 12 at Baltimore City, Code in that a nuisance is suspended (sic) at premises 4335 Reisterstown Road, owned by Aaron Frank, consisted of rat infestation, undue trash and debris and said Aaron Frank has refused entry to said premises to said W. H. Gentry.

* * * * * * *

March 17, 1958—Verdict: Guilty.

March 17, 1958—Fined $20.00 and costs—Oppenheimer, Judge. ($20.00 paid in Northern District).

* * * * * * *

[fol. 174]

IN THE CRIMINAL COURT OF BALTIMORE

THE COURT OF APPEALS—ANNAPOLIS, MARYLAND

April 28, 1958

Benjamin Lipsitz, Esq.
Attorney at Law
1525 Mathieson Building
Baltimore 2, Maryland

Dear Mr. Lipsitz:

The Court has considered your "Petition for Writ of Certiorari to the Criminal Court of Baltimore", filed on March 22nd, 1958, and the answer thereto, filed on April 17th, 1958, in the case of *Aaron D. Frank vs. State of Maryland,* and for your information, said petition was denied on April 25th, 1958.

Very truly yours,

Clerk

JLY/ojr

cc: Office of the State's Attorney of
Baltimore City,
Att'n: Norman Polski, Esq.
Office of the Attorney General,
Att'n: James H. Norris, Jr., Esq.

COPY

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 175]

IN THE CRIMINAL COURT OF BALTIMORE

COURT OF APPEALS OF MARYLAND.

J. LLOYD YOUNG
Clerk

ANNAPOLIS, MARYLAND

June 17, 1958

Benjamin Lipsitz, Esq.
Attorney at Law
1525 Mathieson Building
Baltimore 2, Maryland

Dear Mr. Lipsitz:

In compliance with your letter of June 16th, and per our telephone conversation this morning, I am enclosing herewith a copy of the "Petition for Writ of Certiorari to the Criminal Court of Baltimore" (filed March 22nd, 1958) in the matter of *Aaron D. Frank vs. State of Maryland,* and also a copy of the Answer to said petition (filed April 17th, 1958), together with a copy of our letter to you dated April 28th.

You will note the Court's denial on the copy of the petition itself.

There were no docket entries made in this Court and the Court did not file an opinion in this matter.

Very truly yours,

(Signed) J. Lloyd Young, Clerk.

JLY/OJR
Enclosures

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 176] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 177]

SUPREME COURT OF THE UNITED STATES

No. 278, October Term, 1958

AARON D. FRANK, Appellant,

vs.

STATE OF MARYLAND.

ORDER NOTING PROBABLE JURISDICTION—October 20, 1958

Appeal from the Criminal Court of Baltimore, State of Maryland.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 20, 1958

BALTIMORE CITY HEALTH DEPARTMENT

CITY HEALTH CODE

ARTICLE 12
OF THE
BALTIMORE CITY CODE OF 1950

1952

52

BALTIMORE CITY HEALTH DEPARTMENT

CITY HEALTH CODE

ARTICLE 12
OF THE
BALTIMORE CITY CODE OF 1950

1952

PREFACE

Toward the close of 1951 the Baltimore City Code of 1950 was published. This latest codification by Dr. Horace E. Flack, Director of the Department of Legislative Reference, contains the general ordinances of the Mayor and City Council in force in Baltimore on May 21, 1951. It is a stout gray volume of 1,594 pages and replaced a similar earlier volume, also codified by Dr. Flack, the Baltimore City Code of 1927, which contained the city ordinances in force on May 21, 1928.

In the City Code of 1927, Article 16 constituted the City Health Code. In the 1950 edition, the Health Code has been renumbered as Article 12. It is here republished and includes a number of important new health ordinances that were passed during the period 1928-1951. The Baltimore City Health Department welcomed the opportunity of assisting Dr. Flack in preparing for the consideration of the City Council a series of revisions of the earlier Code, designed for the purpose of providing an up-to-date body of local health legislation.

It should be remembered that for Baltimore City important elements in the public health law are also to be found in Paragraph 11 of Section 6, and particularly in Section 81 of the Baltimore City Charter of 1949; and in addition in Article 43 of The Annotated Code of the Public General Laws of Maryland where the compulsory vaccination law of 1864 and other specialized items are to be found. These two elements in the City Charter and the State Health Law, together with the City Health Code of 1950, constitute the framework of the public health law for Baltimore City.

Of particular significance is the provision in Section 82 of the Baltimore City Charter of 1949 that the Commissioner of Health of the city shall be an *ex officio* member of the City Advisory Welfare Committee. This has been in the City Charter since 1934. Another similar provision which has been a part of the State Health Law since 1880 specifies that the Commissioner of Health of Baltimore City shall be an *ex officio* member of the State Board of Health of Maryland. A like requirement in the State Post Mortem Examiners Law of 1939 places the Commissioner of Health on the Commission that directs the work of the Chief Medical Examiner of Maryland. These important provisions are designed to insure the administrative integration that is essential for health liaison and teamwork.

The history of public health legislation in Baltimore City and in Maryland is long and complicated. There were enactments during the colonial period. Following this, perhaps the earliest important law for the Baltimore area was Chapter 56 of the Maryland

State Laws of 1793 which authorized the appointment of a health officer and the erection of a quarantine hospital for the port of Baltimore. The City Health Department had its origins in the great yellow fever epidemic which ravaged Philadelphia in that year; and it was built into the newly established city at the time of its incorporation on January 1, 1797. From that time until the present, public health legislation in Baltimore has been in large measure an extension of the two major health ordinances, Ordinance No. 11 and Ordinance No. 15 of 1797. The former dealt particularly with the control of pestilential diseases and the latter with the control of nuisances and other matters of general sanitation.

Huntington Williams, M.D.

Commissioner of Health

November 1, 1952.

Article 12

HEALTH

COMMISSIONER OF HEALTH

City Code (1927), art. 16, sec. 2. 1879, art. 23, sec. 5. 1893, art. 23, sec. 5. Ord. 555 (1946-47), sec. 2.

1. It shall be the duty of the Commissioner of Health, from time to time, to make a circuit of observation to the several parts of the city and its environs, which, from their location, or from any collateral circumstances, may be deemed the cause of disease, and in all cases where he may discover the existence of any agent, the presence of which will prove dangerous to the health of the inhabitants of the city, he shall cause any ordinance in existence for its correction to be enforced, or if there be no ordinance competent to the correction of the evil, he shall make a full report of all the attending circumstances to the Mayor, accompanied with his opinion of the necessity of extraordinary or particular action. It shall be his duty also to make diligent inquiry and investigation into all cases or reports of cases of communicable diseases which may occur or come to his attention, and cause such immediate measures to be taken as are practicable to arrest their progress, and generally to notice all things that relate to the preservation of the health of the inhabitants of the City.

It shall be the duty of the Commissioner of Health to give to the Mayor and other City authorities all such professional advice and information as they may require, with a view to the preservation of the health of the inhabitants of the city; to inquire into the health of the inhabitants of the city, and to report in writing to the Mayor every circumstance likely to endanger the health of the inhabitants of the city; and it shall be the duty of each practicing physician in the city, at all convenient times, to give information of the state of the health of the inhabitants of the city to the Commissioner of Health, and assist and aid him with his counsel and advice, in all matters that relate to the preservation of the health of the inhabitants of the city and to the prevention of communicable diseases.

City Code (1927), art. 16, sec. 12. 1879, art. 23, sec. 6. 1893, art. 23, sec. 15. Ord. 556 (1946-47).

2. It shall be the duty of the Assistant Commissioner of Health to assist the Commissioner of Health in the performance of his duties, to discharge the duty of seeing that a faithful record is kept of all reports and other matters relating to the Health Department; and in case of sickness or absence of the Commissioner of Health, he shall perform all the duties herein assigned to the said Commissioner of Health.

City Code (1927), art. 16, secs. 14, 15, 16. Ord. 64 (1900-01). Ord. 118 (1911-12). Ord. 557 (1946-47).

3. All officers and employees of the Commissioner of Health, when on duty, shall wear or carry, and whenever called upon, display a badge or official identifying paper denoting the character of the office of said officer or employee.

Said badge or official identifying paper shall bear a medallion design of the Battle Monument (lettered City of Baltimore, date 1797) with a caduceus on each side with the title of the officer or employee, and the words "Health Department".

Any person who shall improperly or without authority use said badge or official identifying paper shall, upon conviction of said offense, be liable to a fine of not more than Twenty-five Dollars ($25.00).

5. Vacant.

City Code (1927), art. 16, sec. 17. 1879, art. 23, sec. 8. 1893, art. 23, sec. 17.

4. It shall be the duty of the police officers to execute all orders of the Commissioner of Health, so far as they may relate to the preservation of the health of the city.

City Code (1927), art. 16, sec. 20. 1879, art. 23, sec. 11. 1893, art. 23, sec. 20.

6. If any person shall knowingly obstruct or resist the Commissioner of Health, or any person by him appointed, in the execution of the powers to them given, or in the performance of the duties enjoined on them by this or any other ordinance in relation to the public health, such persons shall forfeit and pay a sum not exceeding Two Hundred Dollars.

City Code (1927), art. 16, sec. 21. 1879, art. 23, sec. 12. 1893, art. 23, sec. 21.

7. If any person or persons shall refuse or neglect to comply with any order or notice of the Commissioner of Health, authorized by any section of this Article, and no other penalty is herein provided for such neglect or refusal, such person or persons shall forfeit and pay the sum of Twenty Dollars for each offense, and Five Dollars for every day that such neglect or refusal shall continue.

COWS AND DAIRIES

City Code (1927), art. 16, sec. 28. Ord. 56 (1901-02), sec. 1. Ord. 558 (1946-47).

8. It shall not be lawful for any person or persons to keep or possess within the corporate limits of Baltimore City any cow or cows, either for the conduct of the dairy business or for his or her personal use, unless a permit shall have first been obtained from the Commissioner of Health permitting such cow or cows to be located within the city limits, which permit must designate upon its face specifically the location for the keeping of such cow or cows.

Any person violating this section shall, upon conviction of said offense, be liable to a fine of not more than Twenty-five Dollars

($25), and a further fine of One Dollar ($1) for each day that the violation is continued after notice is given to discontinue.

City Code (1927), art. 16, sec. 49. Ord. 65 (1895-96), sec. 14.

9. It shall be the duty of any person having charge or control of any premises upon which milk or cream is produced, handled, stored or distributed to notify the Commissioner of Health immediately upon the discovery of any case of Asiatic cholera, croup, diphtheria, measles, scarlet fever, small-pox, typhoid fever, typhus fever, or any other contagious or infectious disease upon such premises. No milk or cream shall be sold, exchanged, given away, or in any other manner distributed from such infected premises until all danger of spread of disease has been removed, and the Commissioner of Health certifies to that effect. No person who attends cows or milks them, or who has the care or handling of vessels for the sale, storage or distribution of milk or cream, shall enter any place or premises wherein exists any of the diseases mentioned herein, nor shall any such person have any communication, direct or indirect, with any person who resides in or is an occupant of such infected place.

DAY NURSERIES

Ord. 270 (1932-33), sec. 1.

10. A Day Nursery is defined to be any institution, establishment, or place, in which are received at one time two (2) or more children not of common parentage, for temporary guardianship and nursery care, apart from their parents or guardians, whether for compensation, reward, or otherwise, during that portion of the day or night in which their parents or guardians are engaged in other pursuits and occupations than attending to and caring for such children.

Ord. 270 (1932-33), sec. 2.

11. No person or persons or corporation shall conduct, maintain or operate, in Baltimore City, either as owner, lessee or agent, any Day Nursery without having first obtained a license therefor from the Commissioner of Health, authorizing him, them or it to do so. All such licenses shall be for the period of one year, and the charge of such license issued to any such institution shall be One Dollar ($1.00) and for the renewal of said license from time to time the charge shall be One Dollar ($1.00) per annum.

Ord. 270 (1932-33), sec. 3.

12. The Commissioner of Health is hereby authorized and empowered to make, adopt and enforce rules and regulations for the operation and conduct of said Day Nurseries and said Commissioner of Health shall, from time to time, inspect said Day Nurseries and require them to be kept in a proper sanitary condition.

Ord. 270 (1932-33), sec. 4.

13. Any person violating this sub-title or any order or regulation made and adopted by the Commissioner of Health, in pur-

suance hereof, shall be guilty of a misdemeanor, shall be subject to a fine of not exceeding One Hundred Dollars ($100.00) for each offense, and, in addition thereto, the Commissioner of Health may revoke the license of such Day Nursery.[1]

FOOD PRODUCTS

Milk

City Code (1927), art. 16, sec. 52. Ord. 103 (1907-08), Ord. 262 (1917-18), sec. 55A. Ord. 747 (1941-42), sec. 52.

14. (a) Every person or corporation desiring to bottle or handle for sale, or to offer or expose for sale, or to sell, dispose of, exchange or deliver milk or cream (the words "milk or cream" as herein used being intended to mean milk, cream, skimmed milk, buttermilk or other fermented milk) or to manufacture for sale ice cream or butter, in the City of Baltimore, shall make application to the Commissioner of Health for a permit so to do. Such application shall be made on a printed form to be furnished by the Commissioner of Health upon demand, and the applicant, if an individual, shall state therein his full name and residence, and if a corporation, shall state therein the name of such corporation and the full name and residence of each of its officers. Such application shall also state the location of the place at which it is proposed to carry on the business, and whether the applicant desires to pasteurize or bottle milk or cream, to sell milk or cream in the original unbroken package, or to manufacture for sale ice cream or butter. Such application shall also contain a statement of the number and character of wagons or other vehicles, if any, to be used by the applicant in or about his business; also the number of cows, if any, owned or controlled by the applicant, and such other data concerning the conduct of such business as the Commissioner of Health may require. The Commissioner of Health, upon receipt of such application, shall cause to be investigated the place of business described in such application, and the wagons and other vehicles, if any, intended to be used by such applicant. If such places of business and such wagons and other vehicles are found upon such investigation to be in a sanitary condition and fit for the uses and purposes to which they are intended to be put, said Commissioner of Health shall forthwith register said applicant in a proper record to be kept for the purpose, and issue a permit authorizing such applicant to carry on, engage in and conduct the business applied for in Baltimore City at the place designated in such application. Such permits shall specify the kind or kinds of business to be conducted. The Commissioner of Health may refuse any applicant a permit to pasteurize, bottle, sell, offer for sale, distribute or otherwise dispose of milk, cream or milk products where, in the opinion of the Commissioner of Health, the equipment, personnel or managerial control of the applicant is inadequate to assure physical or working conditions which would render such milk, cream or milk products

[1] Sec. 5, Ord. 270 (1932-33), repealed all ordinances inconsistent therewith.

suitable for consumption as human food and where a permit, after a hearing in accordance with the provisions of this section, has been revoked for violations at the place of business described in the application or for violations for which the applicant was responsible.

(b) All permits granted pursuant to this section may at any time be revoked by the Commissioner of Health for the persistent, repeated or willful violation of any law or ordinance, or of any regulation of the Commissioner of Health, governing the handling or sale of milk or cream, or the manufacture for sale of ice cream or butter in Baltimore City; provided, however, that no such permit shall, at any time, be revoked by the Commissioner of Health unless he shall first have given the holder of the same not less than ten days' notice in writing of his intention to revoke such permit, and an opportunity to be heard by him as to why such should not be done, this proviso not to be taken to apply to cases where the sale of milk or cream or the manufacture for sale of ice cream or butter may be temporarily prohibited by the Commissioner of Health because of disease, temporary insanitary condition or similar causes. Such permits shall be non-transferable, and no permit issued hereunder shall entitle or authorize the holder thereof to carry on, engage in or conduct the business in any place or places other than that described and set out in such permit.

(c) If any person or corporation having a permit, as aforesaid, shall change the location of his or its place of business, notice of such proposed change shall be given to said Commissioner of Health, and his consent in writing received to conduct such business at such new location; and no business shall be conducted or carried on at such new location until such new consent has been received.

(d) Any person or persons or any corporation, or officer, agent or servant thereof, who shall bottle or otherwise handle for sale, or offer or expose for sale, or sell, dispose of, exchange or deliver, or who shall cause to be bottled or otherwise handled for sale or offered or exposed for sale or sold, disposed of, exchanged or delivered (or with intent so to do shall have in his, its or their possession, care, custody, or control in Baltimore City) milk or cream, or who shall manufacture for sale ice cream or butter, in Baltimore City, without having a proper permit so to do, as herein required, shall be fined not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00) for each offense.

(e) The provisions of this section shall not be construed to apply to milk or cream which has been denatured in a manner satisfactory to the Commissioner of Health and which is not intended for human food.

Ord. 262 (1917-18) held constitutional in Creaghan v. Balto., 132 Md. 442. See also Balto. v. Gamble, 132 Md. 473.

Ord. 607 (1933-34).

15. No permit to pasteurize milk, cream, ice cream or other dairy products for sale in Baltimore City shall be granted to any person, firm or corporation whose plant shall be located beyond the corporate limits of Baltimore City. Nothing herein contained shall be construed to affect the rights of holders of permits on May 14, 1934, to continue to hold or to renew the same annually.

City Code (1927), art. 16, sec. 53. Ord. 103 (1907-08), sec. 55B.

16. Every vendor of milk having a permit as aforesaid, shall, whenever so required, furnish the Commissioner of Health a statement of all changes in the data and information provided for in Section 14, and shall also, whenever so required, furnish him a list of all persons from whom he or it receives milk or cream for use in his said business, whether said shipments be from within or outside the City of Baltimore, and said Commissioner of Health shall have power by regulations to require that changes or additions in said lists of shippers shall be furnished him from time to time as they occur; said Commissioner of Health shall keep a record of such shippers, when furnished as aforesaid, for the use of his office, but the same shall not be open to the inspection of other persons. Any person or officer of a corporation failing to furnish lists, data or information as aforesaid, when so required by the Commissioner of Health, shall be fined not more than Fifty Dollars for each offense.

City Code (1927), art. 16, sec. 54. Ord. 103 (1907-08), sec. 55C.

17. The permit to engage in the vending of milk hereinbefore referred to shall be posted conspicuously in the applicant's place of business at a point to be designated by the Commissioner of Health or health inspector. Each vendor of milk shall, before engaging in the sale of milk or cream, cause his name or the name of the dairy and the permit number, the former in letters of a readable size and the permit number in figures not less than three inches in height, to be placed and remain on each outer side of all wagons or other vehicles used by such vendors in the conveyance or sale of milk or cream. Any person or corporation failing to so display said permit, or to cause the lettering aforesaid to be displayed on any wagon or other vehicle used as aforesaid, as in this section provided, shall be fined not less than Ten Dollars nor more than One Hundred Dollars for each offense; and each and every day on which said person or corporation shall fail to display such permit as herein provided, or shall drive or operate or cause to be driven or operated any such wagon or other vehicle in violation of the provisions of this section shall constitute a separate and distinct offense.

City Code (1927), art. 16, sec. 55. Ord. 103 (1907-08), sec. 55D.

18. The Commissioner of Health shall have power to adopt such regulations as he may deem proper and necessary to insure all milk and cream intended for consumption in Baltimore City being produced, transported, stored, kept, distributed, retailed and

delivered under conditions rendering them suitable for consumption as human food, and to compel perfect hygienic and sanitary conditions of all cow stables, creameries and dairies from which milk and cream so intended for consumption in Baltimore City are produced; such regulations not to be inconsistent with existing laws or ordinances, and copies of the same to be printed and kept for free distribution to the public; and said Commissioner of Health shall have power to prohibit the sale within the corporate limits of Baltimore City of milk or cream produced, transported, stored, kept, distributed, retailed or delivered contrary to such regulations, whether said milk or cream be produced within or outside the corporate limits of the City of Baltimore; and to the end that said regulations may be enforced in the case of milk or cream produced outside the corporate limits of the City of Baltimore, but intended for consumption therein, said Commissioner of Health may require such of the city milk inspectors as he may designate for the purpose to make inspections at such intervals and times as he may deem expedient of all dairy farms, stables and other places outside the City of Baltimore from which milk or cream are shipped for consumption in Baltimore City. In case full access to such permises or a full opportunity to investigate all the conditions under which milk is there produced or kept shall be denied said inspectors, or in case upon such inspection the conditions are found such as in the opinion of said Commissioner of Health render such milk or cream unsuitable or unsafe for human food and warrant the exclusion of said milk or cream from sale in Baltimore City, said Commissioner of Health shall have power to absolutely prohibit the sale thereof at any place in Baltimore City until such time as the reason for their exclusion shall in his opinion have ceased, and he shall adopt such means of identifying such milk and cream as to him may seem proper and expedient. In case of the exclusion of any milk or cream as aforesaid from sale within Baltimore City, said Commissioner of Health shall immediately make a record of such fact in a properly indexed book kept for that purpose; said book to be open to the inspection of all vendors of milk who may desire to inspect the same. Any person or corporation or officer, agent or servant thereof, who shall sell, offer for sale, expose for sale, dispose of, exchange or deliver, or with intent so to do as aforesaid, have in his, its or their possession, care, custody or control, any milk or cream which said Commissioner of Health shall so record as excluded from sale in Baltimore City, shall, upon conviction, be fined not less than Fifty nor more than One Hundred Dollars for each offense.

City Code (1927), art. 16, sec. 56. Ord. 262 (1917-18), sec. 55E.

19. Every permit heretofore issued under the provisions of Section 14 of this Article shall expire five months after June 1, 1917, unless an application for renewal thereof be made on or before that date, in which event such permit shall remain in force until the Commissioner of Health acts upon the application for renewal and notifies the applicant in writing that a renewal has

been granted or refused. Permits hereafter granted and permits hereafter renewed shall expire one year after the date on which they are granted or renewed; but if an application for renewal be made any time within thirty days prior to such time of expiration, such permit shall remain in force until the Commissioner of Health notifies the applicant in writing that a renewal has been granted or refused. An inspection fee of Ten Dollars ($10.00), shall be paid to the Commissioner of Health by each applicant for a permit to pasteurize or bottle milk or cream, and a fee of Two Dollars ($2.00) by each applicant for a permit to sell milk or cream in the original unbroken package or to manufacture ice cream or butter; said fees to be paid at the time of the making of the application, whether it be for an original permit or for a renewal thereof. Only one inspection fee is to be paid where the application is for a permit to pasteurize or bottle milk or cream, and also to sell milk or cream or to manufacture ice cream or butter upon the same premises, and in such cases, the fee shall be Ten Dollars ($10.00). All such inspection fees paid shall be promptly accounted for by the Commissioner of Health, and immediately paid over by him to the Comptroller for the use of the City of Baltimore.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 57. 1879, art. 23, sec. 48. 1893, art. 23, sec. 70.

20. It shall not be lawful for any person or persons to adulterate milk offered for sale or sold within the limits of the City of Baltimore, by mixing therewith water, chalk or any drug or other articles whatsoever, under a penalty of not less than Twenty Dollars for each and every offense; and any person or persons who shall sell or offer for sale any milk of a diseased cow, within the limits of the city, shall pay a fine of Twenty Dollars for each and every offense.

Deems v. Mayor and City Council of Balto., 80 Md. 164.
State v. Broadbelt, 89 Md. 565.

City Code (1927), art. 16, sec. 58. Ord. 103 (1907-08), sec. 56A. Ord. 262 (1917-18), sec. 56A.

21. All consumers who receive milk or cream from vendors in cans, bottles, vessels or other containers, which are to be returned to said vendors, shall immediately after emptying the same and before their return as aforesaid, cause such cans, bottles, vessels or other containers to be washed and thoroughly cleansed. All dealers in milk or cream receiving such milk or cream in cans, vessels, or other containers which are to be returned to the person shipping or delivering the same to such dealers shall immediately after emptying the same before their return as aforesaid cause such cans, bottles, vessels or other containers to be cleansed and sterilized with boiling water or otherwise subjected to a moist heat at a temperature of 200 degrees Fahrenheit, or sterilized by other method approved by the Commissioner of Health, and all dealers in milk or cream retailing the same in cans, bottles, vessels, containers or

receptacles of any kind shall thoroughly cleanse and sterilize in the manner above set forth all such cans, bottles, vessels, receptacles and containers before such milk or cream is placed therein for delivery to customers. Any violation of or failure to comply with any of the provisions of this section shall be punishable by a fine of not less than Five Dollars ($5.00) nor more than Fifty Dollars ($50.00).

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 59. Ord. 103 (1907-08), sec. 56B. Ord. 262 (1917-18), sec. 56B.

22. No person shall transfer milk or cream from one receptacle, can, bottle, or vessel of any kind to another vessel of the same or other kind on wharves, railroad depots, on streets or in wagons, except for the purpose of salvage of milk, when the milk can is damaged. Any violation of or failure to comply with any of the provisions of this section shall be punishable by a fine of not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00).

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 60. Ord. 103 (1907-08), sec. 56C.

23. It shall be unlawful for any person, firm or corporation engaged in the business of bottling or vending milk or cream to have on his, their or its premises, or in any wagon used in the delivery of milk or cream, any acid, drug, chemical substance or compound to be used for coloring, adulterating, sophisticating or preserving milk or cream, and no such person, firm or corporation shall have any such acid, drug, chemical substance or compound which can be used for coloring, adulterating, sophisticating or preserving milk or cream, unless such person, firm or corporation shall have a written permit from the Commissioner of Health in Baltimore City, to keep the same for experimental or other purposes not connected with or related to the coloring, adulterating, sophisticating or preserving of milk or cream as such. Any violation of this section shall be punished by a fine of not less than Five Dollars nor more than One Hundred Dollars for each offense.

City Code (1927), art. 16, sec. 61. Ord. 87 (1893-94). Ord. 62 (1903-04).

24. It shall not be lawful for any person or persons to sell, offer for sale, expose for sale, barter, deliver or bring to another, or have on his, her or their premises, store, stall, stand or vehicle, or in or upon the premises of any other person or persons whatsoever, from or in which milk or any other food products are sold or delivered, any impure, adulterated, sophisticated or unwholesome milk or other food products, or any tainted, unsound, rotten or partly decomposed fish, fruit or vegetables or meat, or any food product that is kept fresh by salicylic or boracic acid or any other preservative.

City Code (1927), art. 16, sec. 62. Ord. 62 (1903-04), sec. 1A.

25. It shall not be lawful for any person or persons to secrete or remove, or assist in secreting or removing, any impure or unsound food products as above specified, after the same shall have been condemned as unsound by or by the authority of the Commissioner of Health, or in any way to impede or hinder the action of said Commissioner of Health, his servants or agents, in confiscating and destroying the aforesaid impure food products so condemned as such; but nothing herein contained shall be taken as imposing when[1] the said Commissioner of Health, his servants or agents, the duty or expense of removing the aforesaid impure food products so condemned as such.

City Code (1927), art. 16, sec. 63. Ord. 87 (1893-94), sec. 2. Ord. 103 (1907-08), sec. 59. Ord. 262 (1917-18), sec. 59.

26. Only pure, unadulterated, unsophisticated, and wholesome milk shall be sold or offered for sale in Baltimore City, and such articles shall be understood to be the natural product of healthy cows, which has not been deprived of any part of its cream, and to which no additional liquid or solid or preservative has been added, and which at a temperature of 60 degrees Fahrenheit shall have a specific gravity of not less than 1.029 and contain not less than 12 per cent. of total solids, of which not less than 3½ per cent. shall be milk fats, and of which not less than 8½ per cent. shall be solids other than milk fats. No milk sold, received, kept, offered for sale, or delivered in the City of Baltimore, shall in any particular be under the standard herein described without being considered impure, adulterated, sophisticated or unwholesome. Nothing in this section of this Article shall be construed to prevent the sale of skim milk, buttermilk, sour milk, milk prepared by fermentation or other processes, milk powder, condensed milk, or of modified milk prepared under the prescription of a physician, provided they be sold and plainly marked or labeled as such; and nothing in this section shall be construed to prevent the Commissioner of Health from permitting what is known as the standardization or adjustment of milk under such regulations as the Commissioner of Health may determine.

Only pure, unadulterated, unsophisticated and wholesome cream shall be sold or offered for sale in Baltimore City, and such article shall be understood to be the product of healthy cows which is free from all constituents foreign to normal milk, and which contains not less than 18 per cent. of milk fat. Nothing in this section shall be construed to prevent the sale of cream containing less than 18 per cent. milk fat, provided the percentage of total solids and of milk fat of such cream does not fall below the requirements of milk as above defined and provided the container of such cream be plainly labeled with the percentage of milk fat of such cream.

[1] The word "upon" evidently intended.

Any violation or failure to comply with any of the provisions of this section shall be punishable by a fine of not less than Twenty Dollars ($20.00), nor more than One Hundred Dollars ($100.00).

Deems v. Balto., 80 Md. 164; Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 64. Ord. 262 (1917-18), sec. 59A.

27. Milk and cream produced and handled in conformity with the requirements of this section and such additional regulations as may be prescribed by the Commissioner of Health shall be known as "Standard Milk Pasteurized" and "Standard Cream Pasteurized" respectively.

The Commissioner of Health is authorized to prohibit the sale or use in Baltimore City of any ice cream or butter or other milk product which is made from milk or cream which is below the requirements for Standard Milk Pasteurized or Standard Cream Pasteurized, or any ice cream, butter or other milk product which for any other reason is unfit for human food, and no person shall sell, offer for sale, sell or deliver for consumption in the City of Baltimore any ice cream or butter or other milk product the sale or use of which shall have been so prohibited by the Commissioner of Health.

All milk, skimmed milk, or cream held, kept, offered for sale, sold or delivered for consumption in the City of Baltimore or used for the manufacture of ice cream or butter, buttermilk, or other fermented milks, whey or curd, in the City of Baltimore, shall be produced, pasteurized and handled in the manner set forth in the following rules and definitions, and in conformity with such additional regulations as may be prescribed by the Commissioner of Health, except as otherwise provided in Sections 28, 30, 31 and 32 of this Article.

Rule 1. Standard Milk Pasteurized and Standard Cream Pasteurized shall be produced on dairy farms having dairy farm permits issued pursuant to the provisions of Section 34 of this Article.

Rule 2. Standard Milk Pasteurized shall not contain more than 100,000 bacteria per cubic centimeter after pasteurization and prior to delivery.

Rule 3. Standard Milk Pasteurized shall not contain more than 1,500,000 bacteria per cubic centimeter before pasteurization.

Rule 4. Pasteurized Milk shall be milk which has been uniformly heated to a temperature betwen 142 degrees Fahrenheit and 150 degrees Fahrenheit and maintained at that temperature for not less than 30 minutes, and cooled immediately to a temperature of 45 degrees Fahrenheit or less; provided, however, that nothing in this sub-title shall be construed to prevent the Commissioner of Health from permitting the heating of milk to temperatures higher than 150 degrees Fahrenheit, if, in the opinion of said Commissioner of Health such higher temperatures are desirable.

Pasteurized milk or skimmed milk which is used for the manufacture of any milk products, or pasteurized cream shall be milk or cream which has been uniformly heated to a temperature of 142 degrees Fahrenheit, or higher, and maintained at their temperature for not less than 30 minutes. But the period of holding may be reduced one minute for each additional degree of uniform temperature of heating of such milk or skimmed milk to be used for the manufacture of milk products or cream, with a minimum period of holding of five minutes. Such milk or cream shall be cooled immediately after pasteurization to a temperature of 45 degrees Fahrenheit or less, unless the same is to be used for buttermilk or other ripened milk products.

Rule 5. Milk or cream, while in the plant where it was pasteurized or where it is held, kept or stored, shall be maintained at a temperature below 50 degrees Fahrenheit, and pasteurized milk or cream shall be maintained at all times, prior to delivery, at a temperature below 60 degrees Fahrenheit, unless otherwise permitted by the Commissioner of Health.

Rule 6. Pasteurized milk shall not be repasteurized and sold as milk, except by authorization of, and under regulations, prescribed by the Commissioner of Health.

Rule 7. Pasteurized milk shall not be sold, delivered, or offered for sale after 36 hours from the day of pasteurization.

Rule 8. No pasteurizing apparatus or appliances shall be used for the pasteurization of milk or cream for sale or for use in the manufacture of milk products in the City of Baltimore, until and unless such apparatus and appliances are approved by the Commissioner of Health, or his subordinates.

Rule 9. No building, or any part of any building intended for the pasteurization, bottling, storage or handling of milk or cream shall be erected, altered or enlarged in the City of Baltimore without a permit from the Commissioner of Health. All applications for such permits shall be made to the Commissioner of Health and shall be accompanied with plans and full details of the contemplated erection, alteration or enlargement. Plans shall be submitted in duplicate. One copy shall be retained by the Commissioner and the other returned to the applicant. This requirement is in addition to any building permit required by law or ordinance.

Rule 10. All apparatus and appliances in a plant where milk or cream is pasteurized shall be so constructed that they can be readily cleansed and sterilized. All such apparatus and appliances shall be thoroughly sterilized immediately prior to every time they are used, and shall be thoroughly cleansed immediately following every use thereof. All bottles and other containers of milk or cream, shall have been thoroughly cleansed and sterilized with boiling water or otherwise subjected to a moist heat at a temperature of 200 degrees Fahrenheit or sterilized by other method ap-

proved by the Commissioner of Health, before being filled with milk or cream.

Rule 11. An automatic temperature recording apparatus approved by the Commissioner of Health, or his duly authorized subordinates, shall be installed on pasteurizing appliances, and shall be so maintained that it will accurately record the temperature to which the milk or cream has been raised, and so far as possible the duration of time the milk or cream is maintained at the recorded temperature; and also record the temperature to which pasteurized milk or cream is cooled. All records and charts shall be dated and filed at the pasteurizing plant and subject at all times to the inspection of the Commissioner of Health, or his duly appointed subordinates.

Rule 12. Pasteurized milk or cream shall not be bottled or placed in other receptacles in any place other than in the plant where it has been pasteurized. No person or dealer in milk shall offer for sale, sell or deliver any milk or cream in quantities of less than one gallon unless the same be kept, offered for sale, exposed for sale, sold or delivered in sanitary glass bottles or such other receptacles or in such other manner as may be approved by the Commissioner of Health.

Rule 13. No person shall sell, or with intent so to do, have in his possession, care, custody or control any pasteurized milk or cream unless such milk or cream is contained in and is sold in a tightly closed container in which it was pasteurized or placed immediately after pasteurization and then closed and kept continuously closed until after sale. All milk or cream shall be placed in bottles or other receptacles and capped or tightly closed in such a manner as to prevent the contact of the person of the operator with the milk or cream. The filling or capping of bottles by hand is prohibited.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

Selected Raw Milk and Selected Raw Cream

City Code (1927), art. 16, sec. 65. Ord. 262 (1917-18), sec. 59B.

28. Milk and cream produced and handled in conformity with the provisions of this section shall be known as "Selected Raw Milk" and "Selected Raw Cream", respectively. Any person or corporation desiring to sell, offer for sale, expose for sale, dispose of or exchange milk or cream which has not been pasteurized shall, in addition to securing a permit for the sale of milk and cream as required by Section 14 of this Article, also make application to the Commissioner of Health for a permit to sell raw milk or cream. Such application shall contain the full name and residence of the applicant, and if a corporation the name and residence of each of its officers. Such application shall also state the location of all premises upon which the milk or cream is to be produced, handled or stored. The Commissioner of Health, upon receipt of such application, shall furnish the applicant with a set of rules and regu-

lations governing the handling and distribution of raw milk, and shall cause to be investigated the premises described in such application; and shall also cause to be inspected all equipment upon the premises. If such premises and such equipment are found upon such investigation to be in a sanitary condition, and suitable for the uses and purposes of handling milk intended for consumption in its raw state, the said Commissioner of Health shall forthwith register said applicant in a proper record to be kept for the purpose, and shall issue a permit authorizing such applicant to carry on, engage in, and conduct the business of vendor of raw milk and cream in Baltimore City at the place designated in the application. The applicant for a permit to sell milk or cream that has not been pasteurized shall secure from the Commissioner of Health a form of application for a permit for each producer from whom he proposes to procure such milk or cream, and when these applications shall have been properly filled out and filed the Commissioner of Health shall furnish the applicant for each of the producers a set of rules and regulations governing the production of Selected Raw Milk, and shall in each case cause a careful investigation to be made of the condition of the herd, the farm and its equipment, and if found satisfactory the Commissioner of Health shall register the said producer in a proper record to be kept for the purpose, and shall issue a "Raw Milk Farm Permit" authorizing said producer to ship milk or cream to the City of Baltimore, for sale or distribution, without pasteurization. All permits granted pursuant to this sub-title may, at any time, be revoked by the Commissioner of Health for failure to comply with the rules and regulations which the Commissioner of Health shall have issued in accordance with the power conferred upon him by any ordinance.

Selected raw milk and cream shall be produced, handled, sold and distributed in accordance with all the requirements of Section 27 of this Article, except those relating to pasteurization, and in addition in conformity with the following rules and such other requirements as may be prescribed by regulation of the Commissioner of Health in pursuance of this sub-title.

Rule 1. This milk shall be produced on dairy farms having Raw Milk Dairy Farm Permits, issued pursuant to this section of this Article. This cream shall be cream from such milk. These permits shall be issued only to such farms as in their character and equipment meet the requirements of the rules and regulations of the Commissioner of Health for the production of raw milk. These farms shall be inspected and scored at least quarterly.

Rule 2. This milk shall be solely from cows annually subjected to the tuberculin test, and certified to be free from disease by a veterinarian designated or approved by the Commissioner of Health. The tuberculin test shall have been applied in accordance with rules and regulations approved by the Commissioner of Health. All reactors shall be immediately removed from possible contact with the dairy herd, and the premises disinfected in accordance with the rules and regulations of the United States Bureau of Animal Industry. Examination of the cattle and

premises shall be made as often as may be required by the Commissioner of Health, and all animals found to be diseased shall be immediately removed from possible contact with the dairy herd; and if the nature of the disease is such as to justify it, the owner may be required to disinfect the premises in accordance with the rules and regulations of the United States Bureau of Animal Industry.

Rule 3. All persons employed in or about the barns or milk house, or who in any manner come in contact with the milk on the farms on which such milk or cream is produced, or in any place where such milk or cream is exposed or placed in any containers, shall have passed medical examination satisfactory to the Commissioner of Health, indicating that such employees are free from communicable diseases and are not carriers of disease producing organisms. All such persons shall be examined as often as may be required by the Commissioner of Health. Any communicable illness of such persons, or of any members of the household in which they live, shall immediately exclude such persons from possible contact with the milk, and the nature of the illness shall be immediately reported to the Commissioner of Health, and to the distributor to whom the milk is shipped. The medical examinations shall be made by a physician approved by the Commissioner of Health, and at the expense of the producer.

Rule 4. Selected Raw Milk shall not contain more than 50,000 bacteria per cubic centimeter prior to delivery and shall be delivered to the consumer within forty-eight hours after production.
Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

Labeling

City Code (1927), art. 16, sec. 66. Ord. 262 (1917-18), sec. 59C.

29. All containers in which milk or cream is offered for sale, sold or delivered in the City of Baltimore shall be plainly labeled as follows, namely:

All containers of milk or cream which conform to the requirements of Standard Milk Pasteurized or Standard Cream Pasteurized, as defined by Section 27 hereof, shall be plainly labeled "Standard Milk Pasteurized", if the contents of the container be milk, and "Standard Cream Pasteurized", if the contents be cream, respectively, except in cases of such containers which are properly labeled in conformity with the provisions of Section 31 hereof; and all containers of milk or cream, which conform to the requirements of Selected Raw Milk or Selected Raw Cream, as defined by Section 28 hereof, shall be plainly labeled "Selected Raw Milk", if the contents of the container be milk, and "Selected Raw Cream", if the contents be cream, respectively, except in cases of such containers which are properly labeled in conformity with the provisions of Section 30 hereof; and all containers of milk or cream which is below the requirements for the Standard Milk Pasteurized and Standard Cream Pasteurized, shall be plainly labeled "Below Standard Milk", if the contents of the container be milk, and "Below

Standard Cream", if the contents of the container be cream, respectively, or with such other mark or marks as the Commissioner of Health may require in the exercise of the authority conferred upon him by Section 32 hereof.

All containers of cream which contain less than 18 per cent of milk fat, shall be plainly labeled with the percentage of milk fat which such cream contains, and containers of other cream, the milk fat content of which is as much as or more than 18 per cent. may, at the option of the dealer, be labeled with the percentage of milk fat of such cream.

All such containers shall be plainly labeled with the name of the person or corporation selling the milk or cream, and if the milk or cream is pasteurized, the container shall be plainly labeled with the location of the plant in which the milk or cream has been pasteurized and the day of the week on which such milk or cream was pasteurized unless the Commissioner of Health shall otherwise direct.

No person or persons shall hold, keep, offer for sale or deliver for consumption in the City of Baltimore any milk or cream bearing any label other than that hereinbefore provided for, unless such other label be approved by the Commissioner of Health, and any labeling contrary to the provisions hereof, or failure to label in accordance with the requirements hereof or any other violation of the provisions hereof, shall be a misdemeanor, punishable under the provisions of Section 37 of this Article.

If, at any time hereafter, lettering or other designation of milk or cream fulfilling the requirements of this sub-title shall come into such general use that, in the judgment of the Commissioner of Health, it would be desirable, in the interest of uniformity of designation, to substitute such lettering or other designation for the labeling herein required, he is authorized hereby to do so.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 67. Ord. 262 (1917-18), sec. 59D.

30. The Commissioner of Health may permit the sale in the City of Baltimore of raw milk or raw cream, bearing the label "Certified Milk" or "Certified Cream", provided that such milk or cream shall conform to and shall be handled in accordance with all the requirements of Section 28 of this Article, and in addition to these requirements shall conform to the requirements for Certified Milk and Certified Cream as provided in Section 27 of Article 58 of the Annotated Code of Maryland (1939 Edition) as the same was re-enacted by Chapter 337 of the Acts of the General Assembly of Maryland of 1916, or which may be provided in any amendment thereof which may hereafter be made.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

Selected Milk Pasteurized and Selected Cream Pasteurized

City Code (1927), art 16, sec. 68. Ord. 262 (1917-18), sec. 59E.

31. The Commissioner of Health may permit the sale in the City of Baltimore of pasteurized milk or pasteurized cream, bearing

the label, "Selected Milk Pasteurized" or "Selected Cream Pasteurized", provided such milk or cream conforms with and is handled in accordance with all the requirements of Section 27 of this Article, and in addition conforms with and is handled in accordance with the following rules for "Selected Milk Pasteurized" or "Selected Cream Pasteurized", and, further, conforms with such additional rules and regulations as the Commissioner of Health may establish.

Rule 1. This milk shall be milk solely from cows annually examined and subjected to the tuberculin test and certified to be free from disease by a veterinarian designated or approved by the Commissioner of Health. The tuberculin test shall have been applied in accordance with rules and regulations approved by the Commissioner of Health. All reactors shall be removed immediately from possible contact with the dairy herd and the premises disinfected in accordance with the rules and regulations of the United States Bureau of Animal Industry. The tuberculin testing of herds producing Selected Milk Pasteurized or Selected Cream Pasteurized shall not be required prior to January 1, 1919, but such herds shall be regularly subjected to physical examination for tuberculosis prior to that date. Examination of the cattle and premises shall be made as often as may be required by the Commissioner of Health, and at least semi-annually; and all animals found to be diseased shall be immediately removed from possible contact with the dairy herd, and if the nature of the disease is such as to justify it, the owner may be required to disinfect the premises in accordance with the rules and regulations of the United State Bureau of Animal Industry.

Rule 2. All persons employed in or about the barns, or milk house or who, in any manner, come in contact with the milk on the farms on which such milk or cream is produced, or in any place where such milk or cream is exposed or placed in any containers, shall be examined for communicable diseases as often as may be required by the Commissioner of Health.

Rule 3. This milk shall contain not more than 200,000 bacteria per cubic centimeter before pasteurization, nor more than 30,000 bacteria per cubic centimeter after pasteurization, prior to delivery.

Rule 4. This milk and cream shall be distributed only by a person, firm or corporation having a permit issued by the Commissioner of Health for the sale of Selected Milk Pasteurized and Selected Cream Pasteurized.

Rule 5. The building and the pasteurizing and bottling apparatus and appliances used for the pasteurizing, handling, storing or bottling of Selected Milk Pasteurized or Selected Cream Pasteurized shall not be used for the pasteurizing, handling, storing or bottling of any milk or cream not conforming to all requirements for the sale of Selected Milk Pasteurized and Selected Cream Pasteurized, provided, however, that the Commissioner of Health may permit the pasteurization, handling, bottling and storage in the same building and with the same apparatus and appliances, of Selected Milk

Pasteurized and Selected Cream Pasteurized and Standard Milk Pasteurized and Standard Cream Pasteurized and Below Standard Milk or Cream when, in his opinion, the complete and continued separation of the different classes of milk and cream is assured.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

Below Standard Milk and Cream

City Code (1929), art. 16, sec. 69. Ord. 262 (1917-18), sec. 59F.

32. Milk or cream which for any reason is below the requirements for Standard Milk Pasteurized or Standard Cream Pasteurized, shall be known as Below Standard Milk or Cream, and such milk or cream may be kept, offered for sale, sold, delivered or used in the City of Baltimore only by authority of the Commissioner of Health and only for such purposes and in accordance with such restrictions and regulations as may be prescribed by him.

If the Commissioner of Health shall authorize any such milk or cream to be kept, sold, delivered or used for human food or for the manufacture of food products, the same shall be pasteurized and handled in the manner set forth in Section 27 hereof, and the Commissioner of Health may require that such milk or cream shall be heated, in the process of pasteurization, to such temperature, higher than that required by said Section 27, as he may prescribe.

If the Commissioner of Health shall authorize any such milk or cream to be kept, sold, delivered or used for any purpose other that for human food, or the manufacutre of food products, he shall require that such milk or cream be discolored or denatured in such manner as he may prescribe, to the end that the sale or use thereof for human food or in the manufacture of food products may be prevented.

Containers of such milk or cream shall be labeled Below Standard Milk or Below Standard Cream, as required by Section 29 hereof, or with such other mark or marks as the Commissioner of Health may require.

Provided that the Commissioner of Health shall not permit the sale of milk or cream below the requirements for standard milk pasteurized or standard cream pasteurized for ordinary domestic consumption except under general regulations applicable to all milk coming under the standard prescribed in such regulations.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 70. Ord. 262 (1917-18), sec. 59G.

33. The bacterial counts required in this sub-title or which may be required in any regulation of the Commissioner of Health issued in pursuance of this sub-title shall be determined by the taking of not less than five consecutive bacterial counts taken over a period of not less than one week nor more than one month and the result of at least 80 per cent. of such tests agreeing in conformity or lack of conformity with the requirements of this sub-title or of such regulation of the Commissioner of Health shall determine the rating or grade of the milk or cream respectively as to the matters so tested of the dairy, dairy farm or milk plant from which such samples

come and of the milk and cream produced, handled, or sold therein or therefrom.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

Dairy Farm Permits

City Code (1927), art. 16, sec. 71. Ord. 262 (1917-18), sec. 59H.

34. No person shall bring or send into the City of Baltimore for sale any milk or cream without a dairy farm permit from the Commissioner of Health so to do. Application for said permit shall be made in writing upon a form prescribed by said Commissioner and shall be accompanied by such detailed description of the dairy farm or dairy where said milk or cream is produced or stored as said Commissioner may require. The filing of the application for a dairy farm permit shall be sufficient authority for the shipment of milk or cream until such time as the Commissioner of Health shall have had the dairy herd and premises of the applicant inspected and shall have issued a dairy farm permit to such applicant, or shall have notified the applicant that such permit will not be issued, after which the applicant shall cease to send milk or cream into the City of Baltimore. The dairy farm permit may be revoked at any time by the Commissioner of Health for failure to comply with the requirements of this sub-title or with any rules or regulations that may be issued by the Commissioner of Health in accordance with power conferred upon him by law or ordinance. Dairy farm permits shall expire one year from the date of issue. No dealer, person or corporation shall receive, sell, offer for sale, expose for sale, dispose of or exchange in the City of Baltimore without the written permission of the Commissioner of Health milk or cream which has been produced on any premises for which a dairy farm permit has not been issued or applied for.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 72. Ord. 262 (1917-18), sec. 59-I.

35. No person shall offer for sale, sell, give, furnish, exchange or deliver in the City of Baltimore any milk or milk product from any cow or cows fed either in whole or in part upon swill, wet distillery waste, starch waste, or any substance or mixture to which swill, wet distillery waste, or starch waste has been added, or upon any cannery refuse, unless the feeding of said cannery refuse shall be specifically permitted by the written permit of the Health Commissioner of Baltimore City, which said permit shall be good only for the season when issued and which said permit may be revoked in the discretion of the said Commissioner; provided however, that nothing herein contained shall be construed as affecting, nor as prohibiting, nor authorizing the prohibition of, the offering for sale, selling, giving, furnishing, exchanging or delivering in the City of Baltimore any milk or milk product, because the same is a product from any cow or cows fed upon what is commonly known as brewers spent grain.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 73. Ord. 262 (1917-18), sec. 59J.

36. The Commissioner of Health shall have power to adopt such regulations as he may deem proper and necessary to insure that all condensed milk, condensed cream, evaporated milk, evaporated cream, or other milk or cream products in Baltimore City be produced, stored, kept, distributed, retailed and delivered under conditions rendering them suitable for consumption as human food and rendering impossible the sale of any such products as fresh milk or cream.

Creaghan v. Balto., 132 Md. 442; Balto. v. Gamble, 132 Md. 473.

City Code (1927), art. 16, sec. 74. Ord. 262 (1917-18), sec. 59K.

37. Any person or persons who violate, disobey, neglect, or refuse to comply with any of the provisions of Sections 26 to 36, inclusive, of this Article shall be fined not less than Twenty Dollars ($20.00), nor more than One Hundred Dollars ($100.00), for each offense, and the milk or food products in the possession of any person or persons so violating, disobeying, refusing or neglecting to comply with the provisions of this sub-title may be confiscated, destroyed or denatured by the Commissioner of Health or any inspector or other representative of the Health Department of the City of Baltimore who examines the same.

City Code (1927), art. 16, sec. 75. Ord. 87 (1893-94), sec. 3.

38. It shall be the duty of the Commissioner of Health to carry out the provisions of this sub-title, and to make or cause to be made inspections of milk, meats, vegetables, fruits and fish, wherever such articles are sold, kept, or offered for sale in the City of Baltimore, and to obtain samples of milk and all other food products whose qualities are to be determined by chemical or microscopical examination. It shall also be the duty of the Commissioner of Health to make such rules and regulations as may be required under this sub-title for the better protection of the health of the city.

City Code (1927), art. 16, sec. 76. Ord. 87 (1893-94), sec. 4.

39. In order to provide for the additional duties imposed by this sub-title upon the Commissioner of Health, there shall be appointed, as other city officers are appointed, a competent analytical chemist and three inspectors of food, who shall be under the direction of the Commissioner of Health, and who must be bona fide residents and registered voters of Baltimore City; the chemist shall be a practical analyst and skilled in the chemical and microscopic examination of milk and other food products; he shall not be a member of or interested in any trust, corporation or company dealing in food products; he shall make such chemical and microscopical examinations as will be required under this sub-title, and will report the result of all such examinations to the Commissioner of Health; he shall be present at the hearing and trials of all cases wherein he has made an examination. His salary shall be Fifteen Hundred Dollars per annum. The specific duties of each food

inspector shall be determined by the Commissioner of Health; the salary of each food inspector shall be One Thousand Dollars per annum.

City Code (1927) art. 16, sec. 77. Ord. 103 (1907-08), sec. 61A.

40. The Commissioner of Health and all other officers of the Health Department, and any inspector or police officer authorized by the Commissioner of Health shall have the right and power to enter and have full access to any building, structure or premises where any milk or cream, or either of them, is stored or kept for sale, and shall have the right of access to all wagons, railroad cars or other vehicles of any kind used for the conveyance or delivery of milk and cream, or either of them, and to any building, structure or premises where he believes or has reason to believe milk and cream, or either of them, is stored or kept for sale, and shall have the right to take samples of milk and cream therefrom (such samples not to exceed one quart) for the purpose of inspecting, testing or analyzing the same. Any person or corporation refusing to allow such right of entry or access, or refusing to allow such samples of milk and cream to be taken, or hindering or obstructing any officer named herein in carrying out the power conferred by this section, shall be fined not less than Five Dollars nor more than One Hundred Dollars for each offense.

City Code (1927), art. 16, sec. 78. Ord. 103 (1907-08), sec. 61B.

41. Every sample of milk delivered to any officer of the Health Department or inspector shall have a label attached to the vessel containing such sample, which shall have written thereon, at the time of the delivery of such sample, the number of the dealer's permit, the number of the sample, the date of collection and the name of the inspector or officer taking the same; and a memorandum shall be made by the officer or inspector collecting such sample, of the number of the sample, and the name of the owner and driver from whom collected; and no conviction shall be had of any person for selling or having in his possession adulterated milk as in this sub-title defined, unless at the time of taking the sample upon the evidence of which a conviction is asked, a duplicate sample properly sealed and marked for identification, shall have been delivered to the person from whose possession such original sample was taken. In taking samples, the milk in the receptacle from which the same is taken, shall be so agitated as to insure a fair mixture of the contents.

City Code (1927), art. 16, sec. 79. Ord. 87 (1893-94), sec. 5.

42. The term food product, as used in this sub-title, shall be construed to mean any natural or artificial product, that with or without admixture, preparation or cooking, is intended to be taken into the human stomach by way of food and not as a medicine; provided that alcoholic or fermented drinks shall not be classed as food products; also, that the term adulteration shall be construed to mean any artificial addition to normal constituents; and the term sophistication shall be construed to mean the substitution of

one product for another, or any abstraction of or artificial change in the normal constituents, provided that goods canned according to the rules of the Canned Goods Exchange of Baltimore shall not be considered sophisticated; and the term unwholesome shall be construed to mean deleterious to health, or liable to introduce, cause or increase sickness, or impairment or derangement of functions of the human body by the temporary or continuous use of the unwholesome product; and the term impure shall be construed to mean natural change or decomposition of normal constituents, or absorption of or commingling with deleterious gases, liquids or solids; provided, that in a warrant, indictment, or legal paper or proceeding, the term impure as applied to a food product shall be a good and sufficient description to the term adulterated, sophisticated, unwholesome, unsound, tainted, rotten, partly decomposed, or impure, as used in this sub-title, or of two or more of these terms.

City Code (1927), art. 16, sec. 80. Ord. 87 (1893-94), sec. 6. Ord. 130 (1893-94). Ord. 62 (1903-04), sec. 6.

43. Any person or persons who violate, disobey, neglect or refuse to comply with any of the provisions of Sections 38-42, shall be subject to a penalty of not less than Twenty Dollars ($20) nor more than One Hundred Dollars ($100) for each offense; said fine to be collected as other fines and forfeitures are collected.

City Code (1927), art. 16, sec. 81. Ord. 103 (1907-08), sec. 203A.

44. No prosecution of any person or corporation, on a charge of violating any law, ordinance or regulation relating to or governing the sale of milk or cream in Baltimore City shall be had or maintained unless, at the initial stage thereof, such prosecution shall have been authorized and directed by the written order of the Commissioner of Health, signed by him or by an Assistant Commissioner of Health, such written order to be filed with the paper in the proceeding.

MEAT INSPECTION[1]

City Code (1927), art. 16, sec. 82. Ord. 431 (1925-26), sec. 1. Ord. 492 (1928-29), sec. 1.

45. There shall be in the Department of Health of Baltimore City, a Bureau designated as "Bureau of Meat Inspection", and for the proper conduct of said Bureau and for the purposes hereinafter set forth, the Commissioner of Health shall appoint such number of inspectors at such salaries as shall be authorized by the Board of Estimates of Baltimore City. The Chief of said Bureau shall be a veterinarian, licensed by the State of Maryland, who has had practical experience in the Bureau of Animal Industry, in the Department of Agriculture of the United States, or an equivalent experience, in ante and post mortem examination of animals slaughtered for human consumption, and in supervising the process

[1] Sections 45-59 (Ord. 431 of 1925-26) held constitutional in Balto. v. Bloecher and Schaaf, 149 Md. 648. Affirmed by U. S. Supreme Court 48 Sup. Ct. Rep. 33.

of manufacturing food products thereof. The Chief Inspector and all other employees of the said Bureau shall perform such duties in said Bureau or elsewhere in the Department of Health as may be assigned to them from time to time by the Commissioner of Health or by his duly authorized Deputy.

City Code (1927), art. 16, sec. 83. Ord. 431 (1925-26), sec. 2. Ord. 466 (1933-34). Ord. 741 (1938-39), sec. 83.

46. No person shall sell, have, keep or expose for sale for human food, or have in possession, the flesh, meat and products, or meat food products of any cattle, calves, sheep, swine or goats unless the same shall have been slaughtered or prepared under the supervision of the Bureau of Animal Industry, U. S. Department of Agriculture or under the supervision of the Commissioner of Health in accordance with the provisions of this sub-title, or the same shall bear the inspection legend or other official mark of identification of a Board of Health whose meat inspection standard is equal to that of and recognized by the Commissioner of Health.

Any person, firm or corporation establishing, maintaining or operating any business as herein classified shall procure a license from the Commissioner of Health and pay therefor an annual fee, in advance, in accordance with the following schedule:

Class A—Slaughterers

Slaughterers shall be construed to include any person, firm or corporation engaged in the business of slaughtering of food animals, such as cattle, calves, swine, sheep, lambs or goats, and also including any person, firm or corporation having any of the above enumerated animals slaughtered for him, them or it in any plant maintaining or operating a slaughtering business; including the right of processing of meat and meat food products; including the right of furnishing cold storage and refrigeration on premises; manufacturing meat food products, packing for market; rendering of edible fats and inedible by-products; handling and selling of such products at wholesale and/or retail upon the premises where slaughtered and prepared, or at the place of business of any person, firm or corporation sending the above-named animals to be slaughtered.

The annual license fee under this class shall be based on the maximum fee for any one species slaughtered in each such establishment, said maximum fee to be the only fee collectible for each such establishment, as follows:

Cattle—

Not exceeding	200	head per annum	$ 60
Not exceeding	1,000	head per annum	120
Not exceeding	2,000	head per annum	180
Not exceeding	4,000	head per annum	240
Exceeding	4,000	head per annum	300

Calves, sheep or lambs, swine and goats—

Not exceeding	2,000	head per	annum	$ 60
Not exceeding	6,000	head per	annum	120
Not exceeding	10,000	head per	annum	180
Not exceeding	15,000	head per	annum	210
Not exceeding	20,000	head per	annum	240
Exceeding	20,000	head per	annum	300

Class B—Processors and Manufacturers

For persons, firms and corporations engaged in the processing of meat products, manufacturing meat food products, packing them for market, rendering of edible fats; and to engage in the handling and selling of such products at wholesale and/or retail, a license fee of Sixty Dollars ($60) shall be charged for each establishment so engaged.

The term "manufacturing" as used in this section shall be construed to mean subjecting fresh meat, prepared meat or a mixture of fresh meat and prepared, with one or more of the following: herbs, spices, cereals, common salt, sodium nitrate, sodium nitrite, potassium nitrate, sugar, a syrup, water and vinegar.

Class C—County

No license or permit for handling meat or meat-food products intended for use or sale in Baltimore City, shall hereafter be granted under the provisions of this section to any person, firm or corporation coming under Class A—Slaughterers, or Class B—Processors and Manufacturers, whose plant or place of business shall be located beyond the corporate limits of Baltimore City; provided, however, that nothing herein contained shall be construed to affect the rights of holders of such licenses or permits at the time of the passage of this ordinance to continue to hold or to renew the same annually; but such holders shall, in addition to the payment of a license fee, pay to the Commissioner of Health, annually, in advance, the sum of Fifty Dollars ($50.00) for transportation service for plants located within ten (10) miles of the City limits and One Hundred Dollars ($100.00) for plants located more than ten (10) miles beyond the City limits.

Class D—Wholesalers

1. The term "wholesale" as used in this section shall be construed to mean the making of sales to the wholesale and retail trade in the City of Baltimore, including such sales by brokers, commission merchants, jobbers, packers' agents and itinerant vendors, and shall also include sales in quantities or on a large scale to hotels, restaurants, institutions, commissaries, manufacturers and the supplying of branch or chain establishments from a central depot or store.

2. For persons, firms and corporations engaged in the sale or distribution of meat and meat food products which have their origin

outside the corporate limits of the state and who shall ship such products into the City of Baltimore by means of steamship lines, railroads or motor vehicle, or by maintaining a distributing station, place or warehouse within the City of Baltimore, or by means of vehicles operated upon the streets of the city, or who shall have an office in the city but do not distribute meat and meat food products by vehicle, a license fee of One Hundred Dollars ($100) shall be charged.

3. For persons, firms and corporations engaged in the selling of meat and meat food products at wholesale to the retail trade, a license fee of Thirty-five Dollars ($35) shall be charged for each such store, stand, stall or vehicle so engaged.

Class E—Retailers of Meat and Meat Food Products

1. The term "retail sale of meat and meat food products" as used in this sub-title shall be construed to mean where any person, firm or corporation use, operate or maintain any building, room, stand, enclosure, place or establishment for the purpose of selling, offering for sale or keeping with the intention of selling or distributing at retail, any article of food in which meat and meat food products (fresh, cooked or smoked) is an ingredient and is of a definite and considerable portion of, or is used for or is mixed with or enters into the composition of any food used or intended for human consumption.

2. Cured Meat: Subjecting fresh meat to a solution of common salt with or without one or more of the following: sodium nitrate, sodium nitrite, potassium nitrate, sugar, a syrup, honey, spice.

3. Cooked Meat: Subjecting fresh meat, meat food products, meat by-products and/or cured meat to the direct action of heat, such as roasting and/or boiling.

4. Smoked Meat: Subjecting fresh meat, dried meat, or cured meat to the direct action of the smoke either of burning wood or of similar or other burning material.

5. For persons, firms and corporations engaged in the selling of meats and meat food products at retail, a license fee shall be charged for each such place so engaged, as follows:

(a) Retail sale of meats and meat food products, including the right of curing of meat products..... $1.00

(b) Retail sale of meats and meat food products, including the right of curing and cooking meat and meat food products 10.00

(c) Retail sale of meats and meat food products, including the right of curing, cooking and smoking meat and meat food products..... 15.00

Class F—Route Trucks—Retail

For persons, firms and corporations engaged in the sale of meats and meat food products at retail from any vehicle along or upon

the streets of the City of Baltimore, a license fee of Fifteen Dollars ($15) shall be charged for each such vehicle so engaged.

Class G—Storage Warehouses

For persons, firms and corporations engaged in the business of public cold storage and/or refrigeration of meat and/or meat food products a license fee of Fifty Dollars ($50) shall be charged for each such place or warehouse so engaged.

Class H—Renderers and Collectors of Animal Substances

Shall include the business of rendering and reduction of dead carcasses and animal substances, and the gathering or transferring of butcher's offals, fats, bones, grease or any animal matter whatsoever.

(a) For persons, firms and corporations engaged in the rendering or reduction of dead animals and animal substances, collected or gathered or brought into an establishment from outside of the premises, a license fee of Twenty-five Dollars ($25) shall be charged for each establishment so engaged.

(b) For persons, firms and corporations engaged in the collecting, gathering of butcher's offals, bones, fats, grease or any animal matter whatsoever, a license fee of Ten Dollars ($10) shall be charged for each such vehicle so engaged.

Permits

Permits shall be non-transferable and no permit issued hereunder shall authorize the holder thereof to carry on, engage in or conduct the business in any place or places other than described and set out in such permit.

The Commissioner of Health may refuse to grant such permit and refuse inspection if the person making application for, or to whom the permit was issued, does not comply with the meat inspection law and regulations now in force or that may hereafter be adopted by the Commissioner of Health in controlling the slaughtering and inspection of animals and the preparation and sale of meat products and meat food products.

City Code (1927), art. 16, sec. 84. Ord. 431 (1925-26), sec. 3.

47. To prevent the sale and use in the City of Baltimore of meat and meat food products which are diseased, unsound, unhealthful, unwholesome or otherwise unfit for human food, the Commissioner of Health, at his discretion, may cause to be made by inspectors provided for in this sub-title, an examination and inspection of all cattle, sheep, swine and goats before they shall be allowed to enter into any slaughtering, packing, meat canning, rendering or other similar establishment in which they are to be slaughtered, and all cattle, sheep, swine and goats found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine and goats,

and when so slaughtered the carcasses of said cattle, sheep, swine and goats shall be subjected to a careful examination and inspection and all such found to be unsound, unhealthful, unwholesome or unfit for human food or food products shall be condemned and destroyed for food purposes by the establishment in the presence of an inspector, and all such condemned cattle shall be delivered to a licensed rendering plant; and any establishment failing to destroy and remove such condemned carcasses, or parts thereof, shall be subjected to a revocation of the license granted under the provisions of this sub-title and the inspectors may be removed therefrom by the Commissioner of Health.

City Code (1927), art. 16, sec. 85. Ord. 431 (1925-26), sec. 4.

48. The Commissioner of Health shall cause to be made, through inspectors provided for in this sub-title, a post-mortem examination and inspection of the carcasses, and parts thereof, of all cattle, sheep, swine and goats to be prepared at any slaughtering, meat canning, salting, packing, rendering or similar establishment in Baltimore City and intended for human consumption therein, and the carcasses, and parts thereof, of all such animals found to be sound, healthful, wholesome and fit for human food shall be marked, stamped, tagged or labeled "inspected and passed", and said inspector shall label, mark, stamp and tag as "inspected and condemned" all carcasses, and parts thereof, of animals found to be unsound, unhealthful, unwholesome or otherwise unfit for human food; and all carcasses, and parts thereof, thus inspected and condemned shall be destroyed for food purposes by the establishment in the presence of an inspector, and all such condemned cattle shall be delivered to a licensed rendering plant; and any establishment failing to destroy and remove such condemned carcasses, or parts thereof, shall be subjected to a revocation of the license granted under the provisions of this sub-title, and the inspectors may be removed therefrom by the Commissioner of Health. Whenever they may deem it necessary, after the first inspection, the inspectors may re-inspect said carcasses, or parts thereof, to determine whether since the first inspection the same have become unsound, unhealthful, unwholesome or in any way unfit for human food, and if any such upon re-examination and re-inspection be found to be unsound, unhealthful, unwholesome or in any way unfit for human food, the same shall be condemned and delivered to a licensed rendering establishment. The provisions of this section shall apply to carcasses, or parts thereof, of the animals mentioned or the meat or meat products thereof, which may be brought into any such establishment mentioned, and examination and inspection shall be made before the carcasses, or parts thereof, shall be allowed to enter into any department wherein the same are to be treated or prepared for meat food products, and shall likewise apply to such products which, after having been issued from such establishment shall be returned thereto or any similar establishment where inspection is maintained.

City Code (1927), art. 16, sec. 86. Ord. 431 (1925-26), sec. 5.

49. The Commissioner of Health shall cause to be made, through inspectors provided for in this sub-title, an examination and inspection of all meat food products prepared for sale and human consumption in Baltimore City in any slaughtering, meat canning, salting, packing, rendering or similar establishment, and the inspectors herein provided for shall mark, stamp, tag or label as "inspected and passed". All such products found to be sound, healthful and wholesome and which contain no dyes, chemicals, preservatives or ingredients which render such meat food products unsound, unhealthful, unwholesome or unfit for human food; and said inspectors shall label, mark, stamp or tag as "inspected and condemned" all such products found to be unsound, unhealthful and unwholesome, or which contain dyes, chemicals, preservatives or ingredients which render such meat food products unsound, unhealthful, unwholesome or unfit for human food, and all such condemned meat food products shall be destroyed for food purposes by the establishment in the presence of an inspector; and any establishment failing to destroy and remove such condemned meat food products shall be subjected to a revocation of the license granted under the provisions of this sub-title, and the inspectors may be removed therefrom by the Commissioner of Health.

City Code (1927), art. 16, sec. 87. Ord. 431 (1925-26), sec. 6.

50. When any meat or meat food products prepared for sale or human consumption in Baltimore City and marked "Inspected and Passed" shall be placed or packed in any can, pot, tin, canvas or other receptacle or covering in any establishment where inspection under the provisions of this sub-title is required, the person, firm or corporation preparing said products shall cause a label to be attached to said can, pot, tin, canvas or other receptacle or covering under the supervision of an inspector, which label shall state that the contents thereof have been "Inspected and Passed" under the provisions of this sub-title; but no inspection and examination of meat or meat food products deposited or enclosed in cans, tins, pots, canvas or other receptacles or coverings in any establishment where inspection under this sub-title is maintained, shall be deemed to be complete until such meat or meat food products have been sealed or enclosed in said can, tin, pot, canvas or other receptacle or covering under the supervision of an inspector, and no such meat or meat food products shall be sold or offered for sale in Baltimore City under any false or deceptive name; but established trade-name or names, which are usual to such products, and which are not false or deceptive, shall be permitted when registered with and approved by the Commissioner of Health.

City Code (1927), art. 16, sec. 88. Ord. 431 (1925-26), sec. 7.

51. The Commissioner of Health shall cause to be made from time to time by experts in sanitation, and by other competent inspectors, such inspection of all slaughtering, meat canning, salting, packing, rendering or similar establishments in which cattle, sheep, swine and goats are slaughtered and the meat and meat food

products thereof are prepared for sale, offered for sale, or sold in the City of Baltimore, as may be necessary to inform himself concerning the sanitary condition of the same, and where the sanitary conditions of any establishment are such that the meat or meat food products are rendered unclean, unsound, unhealthful, unwholesome or otherwise unfit for human food, the Commissioner of Health shall refuse to allow said meat or meat food products to be labeled, marked, stamped and tagged "Inspected and Passed".

City Code (1927), art. 16, sec. 89. Ord. 431 (1925-26), sec. 8.

52. Before any establishment, subject to the provisions of this sub-title, shall slaughter any cattle, sheep, swine or goats, the proprietor thereof shall notify the Commissioner of Health so that inspectors may be present at the time of slaughtering to examine, inspect, stamp or label the carcasses as herein provided, and all such slaughtering shall be done between the hours of Five A. M. and Seven P. M.; unless in emergency, other hours shall be designated by the Commissioner of Health. If in any case it shall be impossible for the Commissioner of Health to have inspectors present at the time of slaughtering, an inspection service shall be provided by the establishment under the written authority of the Commissioner of Health as a substitute for municipal inspection, and such inspection shall in all respects conform to the inspection provided for in this sub-title; and for the effectual enforcement of all the provisions of this sub-title, the inspectors herein provided for shall have access at all times, by day or night, whether the establishment be operated or not, to every part of the establishment.

City Code (1927), art. 16, sec. 90. Ord. 431 (1925-26), sec. 9.

53. No person, firm or corporation, or officer, agent or employee thereof, shall forge, counterfeit, simulate or falsely represent, or shall, without proper authority, use or detach, or shall knowingly or wrongfully alter, deface or destroy any of the marks, stamps, tags, labels or other identification provided to be used hereunder by the Commissioner of Health on any carcasses, parts of carcasses, or the food products or containers thereof, or any certificate in relation thereto, authorized by this sub-title.

City Code (1927), art. 16, sec. 91. Ord. 431 (1925-26), sec. 10.

54. The Commissioner of Health shall cause the inspectors herein provided for to make examination and inspection of all cattle, sheep, swine and goats, the inspection of which is hereinbefore provided for, and of all carcasses and parts thereof and of all meats and meat food products thereof and of the sanitary condition of all establishments in which such meat or meat food products hereinbefore described are prepared, subject to the provisions of this sub-title, and the said inspectors shall refuse to stamp, mark, tag or label any carcass or part thereof, or any meat food products therefrom prepared or offered for sale or sold in any establishment hereinbefore mentioned until the same shall have been actually inspected and found to be sound, healthful, wholesome and fit for

human food and contain no dyes, chemicals, preservatives or ingredients which render such meat and meat food products unsound, unhealthful, unwholesome, unfit for human food, or so altered in appearance as to simulate a fresh, sound product, and have been prepared under proper sanitary conditions as hereinbefore provided for; and said inspectors shall perform such other duties as are provided for by this sub-title and as may be prescribed by the Commissioner of Health.

City Code (1927), art. 16, sec. 92. Ord. 431 (1925-26), sec. 11.

55. Any person, firm or corporation, or officer, agent or employee of any person, firm or corporation, who shall give, pay or offer, directly or indirectly, to any inspector any money or other thing of value with intent to influence said inspector in the discharge of any duty herein provided for, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subjected to a fine of not more than Five Hundred Dollars ($500.00) and to imprisonment in the Baltimore City Jail for not more than one (1) year; and any inspector who shall accept any money, gift or other thing of value from any person, firm or corporation, or officer, agent or employee thereof with intent to influence his official action, shall be deemed guilty of a misdemeanor, and upon conviction shall be subjected to the punishment in this section provided.

City Code (1927), art. 16, sec. 93. Ord. 431 (1925-26), sec. 12.

56. Before the Commissioner of Health shall revoke any license issued under the provisions of this sub-title for any violation thereof, the said commissioner shall notify the applicant of the alleged violation and that an opportunity will be given him to show cause why the license should not be revoked, and said hearing shall be had on a day not less than three (3) nor more than five (5) days after the date of the notice of the alleged violation, and such notice of the violation and of the hearing shall be served by an inspector on the proprietor, or his or its agent in charge of the establishment, and at the hearing the Commissioner shall decide the matter, and if he shall be of opinion that a violation has been proved, he shall forthwith revoke the license and such revocation shall be for such period of time as he shall stipulate, but in no event for more than one (1) year. In the event the applicant shall not appear at the time set for hearing, and the Commissioner shall be satisfied that there has been a violation of the provisions of this sub-title, he shall pass an order in the case and notify the licensee forthwith of his action. From any adverse action of the Commissioner, there shall be an appeal to the Baltimore City Court, to be taken within twenty (20) days from the date of said action, by filing a petition of appeal to the Baltimore City Court praying said court to review the same, whereupon the said court shall pass an order setting such appeal for hearing and requiring the Commissioner to produce in court all papers relating to the action taken, from which an appeal is prayed. The jurisdiction of the Baltimore City Court on appeal shall be limited to the question of the legality of the order, decision,

action or determination complained of. Provided, that pending the hearing of appeal, no order of revocation shall be stayed.

City Code (1927), art. 16, sec. 94. Ord. 431 (1925-26), sec. 13.

57. Any person, firm or corporation, or any officer, or agent of such person, firm or corporation, who shall violate any of the provisions of this sub-title, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the Baltimore City Jail for not more than twelve months, or to both fine and imprisonment, in the discretion of the court; provided, however, that operation without a license after revocation or suspension thereof shall subject the offender to a fine of One Hundred Dollars ($100.00) for each day of such operation subsequent to said revocation or suspension, or to imprisonment in the Baltimore City Jail for sixty (60) days, in the discretion of the court.

City Code (1927), art. 16, sec. 95. Ord. 431 (1925-26), sec. 14. Ord. 492 (1928-29), sec. 14.

58. In order to avoid duplication of inspection at establishments subject to inspection by the Bureau of Animal Industry of the United States Department of Agriculture, all carcasses inspected by the said Bureau within Baltimore City shall be exempt from the provisions of this sub-title, respecting inspection of carcasses at the time of slaughter, and the disposal of diseased carcasses and organs and the tanking thereof, so long as the inspection of such carcasses and the disposal thereof, as aforesaid, is subject to Federal regulations and restrictions the same or substantially the same as herein provided; provided, that the Commissioner of Health and his subordinates shall have access at all times to such establishments as are under Federal inspection to the same extent as to other establishments subject to the provisions of this sub-title; and providing further that should inspection by the Bureau of Animal Industry be withdrawn from any such establishments, they shall become subject to all the provisions of the said sub-title.

City Code (1927), art. 16, sec. 96. Ord. 431 (1925-26), sec. 15.

59. Swine produced and slaughtered or any swine products prepared for market on the farm where said swine are produced by a bona fide farmer may be delivered for sale to any dealer in or consumer of such products in the City of Baltimore, and such swine or swine products shall only be subject to such regulations for inspection as shall be made by the Commissioner of Health to govern the slaughter and preparation for market and sale of such swine or swine products.

Balto. v. Bloecher & Schaaf, 149 Md. 648; Bloecher & Schaaf v. Balto., 48 Sup. Ct. Rep. 33.

Ord. 791 (1929-30), sec. 96A.

60. The Commissioner of Health of Baltimore City shall have full power and authority to make, adopt and promulgate, from

time to time, such rules and regulations, not inconsistent with the provisions of the aforegoing Sections 46 to 59, inclusive, of this Article, as may be necessary for the efficient execution of the provisions of said sections. All rules and regulations formulated and issued by the said Commissioner of Health in pursuance of the power hereby conferred, shall have the force and effect of laws, and all violations of such rules and regulations shall be deemed misdemeanors and shall be subjected to provisions of Section 57 of this Article.

GAS APPLIANCES[1]

Registration of Appliances

City Code (1927), art. 16, sec. 97. Ord. 436 (1925-26). Ord. 1063 (1926-27). Ord. 361 (1927-28), sec. 1. Ord. 1154 (1949-50), sec. 1.

60A. (a) No tubing, appliance, appurtenance or device for use with, by, or for the combustion of gas as distributed and/or sold in the City of Baltimore shall be sold, offered for sale, connected or installed in the City of Baltimore, unless the type, sample or model thereof shall be registered with the Building Inspection Engineer of Baltimore City, the registration thereof to be in the following manner:

(b) Application shall be made to the Building Inspection Engineer of Baltimore City and the applicant shall furnish such information and certificates and cause such tests to be conducted as may be required by the Building Inspection Engineer to secure proper registration and identification of any such tubing, appliance, appurtenance, device, sample or model thereof; and before such application shall be approved by the Building Inspection Engineer, he shall determine whether said tubing, appliance, appurtenance, device, sample, or model thereof described therein conforms to the rules, regulations and specifications hereinafter provided for in Section 60H hereof. And in connection with such application, the applicant shall file evidence satisfactory to the Building Inspection Engineer that such gas appliance, sample or model thereof has been examined and tested and found to comply with the rules, regulations, specifications and requirements as provided for in Section 60H. The Building Inspection Engineer shall not register the tubing, appliance, appurtenance, device, sample or model thereof described in said application, unless it shall appear that it conforms to said rules, regulations and specifications, and meets such tests as the Building Inspection Engineer may prescribe.

(c) If the Building Inspection Engineer determines that the tubing, appliance, appurtenance or device described in any such application for registration does not conform to said rules, regulations and specifications, or if he is not satisfied with the application, he shall notify the applicant forthwith, stating his reasons therefor.

(d) All tubing, appliances, appurtenances or devices shall bear an identification number or designation which may be the manu-

[1] Secs. 97-108 (1927 Ed.) on same subject held valid. Stove & Range Co. v. Balto., 156 Md. 246; 144 A 358.

facturer's regular trade name and model number, and when applied for by such manufacturer, it shall be stated in the application for registration, provided that nothing contained in this ordinance shall be construed to apply to tubing, appliances, appurtenances or devices used for strictly experimental purposes or for strictly industrial use as may be defined in the rules, regulations and specifications, as provided for in Section 60H hereof.

City Code (1927), art. 16, sec. 98. Ord. 436 (1925-26). Ord. 1063 (1926-27). Ord. 1154 (1949-50), sec. 2.

60B. The Building Inspection Engineer may at any time cause an examination to be made by his Inspector of any tubing, appliance, appurtenance or device, and if it shall be found, upon such examination, that such tubing, appliance, appurtenance or device does not comply with the rules, regulations and specifications, as provided for in Section 60H hereof, or is otherwise unsafe, the Building Inspection Engineer shall notify the registrant wherein said tubing, appliance, appurtenance or device does not conform to said rules, regulations and specifications, or wherein it is otherwise unsafe, and the said registrant shall be accorded reasonable opportunity to conform the tubing, appliance, appurtenance or device to said rules, regulations and specifications, or to correct within a reasonable time the hazardous feature or features thereof. If the registrant shall not within a reasonable time conform the tubing, appliance, appurtenance or device to said rules, regulations and specifications, or correct the hazardous feature or features of the tubing, appliance, appurtenances or device, the Building Inspection Engineer shall cancel the registration of said tubing, appliance, appurtenance or device and notify the registrant in writing that after the expiration of ten (10) days, no such tubing, appliance, appurtenance or device shall be installed, sold or offered for sale in the City of Baltimore; provided that any action of cancellation taken by the Building Inspection Engineer shall not be construed to prohibit the former registrant from reapplying for registration, in which event, all the provisions relating to original applications shall apply.

City Code (1927), art. 16, sec. 99. Ord. 436 (1925-26), sec. 3. Ord. 1154 (1949-50), sec. 3.

60C. The Building Inspection Engineer is authorized to cancel the registration of any model of tubing, appliance, appurtenance or device if any of the rules, regulations and specifications, as provided for in Section 60H hereof, are violated in the design or performance of any such model or sample; provided that no cancellation shall be made without the registrant being first accorded an opportunity of a hearing and to show cause why the registration should not be cancelled, and upon the decision, after hearing by the Building Inspection Engineer that such rules, regulations and specifications are being violated and the application should be cancelled, cancellation shall be effective ten (10) days after the decision of the Building Inspection Engineer.

City Code (1927), art. 16, sec. 100. Ord. 436 (1925-26), sec. 4. Ord. 1154 (1949-50), sec. 4.

60D. Appurtenances and devices herein referred to shall be construed to include instruments for use in connection with gas tubing or appliances which affect the normal and regular use of such tubing or appliances without said device, such as economy devices, accessories, solid tops, and other such equipment which is intended to be used in conjunction with self contained appliances and which cannot be considered as a gas consuming appliance.

City Code (1927), art. 16, sec. 101. Ord. 436 (1925-26), sec. 5. Ord. 1154 (1949-50), sec. 5.

Any person, firm or corporation may, without charge, secure from the Building Inspection Engineer, information regarding the registration with the said Building Inspection Engineer of any tubing, appliance, appurtenance or device.

Registration of Gas Fitters

City Code (1927), art. 16, sec. 103. Ord. 436 (1925-26), sec. 7. Ord. 1154 (1949-50), sec. 6.

60E. All workmen now engaged, or who shall hereafter engage in gas fitting, unless they be already registered as Gas Fitters of Baltimore City, shall be subject to examination and registration by a Board to be hereinafter created.

That there is hereby established a Board to be known as "The Gas Appliance Board"; said Board to consist of five (5) members, one of whom shall be the Director of Public Works ex officio, one of whom shall be the Builidng Inspection Engineer ex officio, and one of whom shall be the Commissioner of Health ex officio, and two of whom shall be appointed by the Mayor. One of the latter two must be a representative of the Consolidated Gas Electric Light and Power Company of Baltimore, and the other must be a Master Plumber who must also be a Registered Gas Fitter of Baltimore City.

The members of the Board shall receive no compensation for their services hereunder.

The terms of the ex officio members of the Board shall correspond to their respective official tenure, and the terms of each of the two appointed members shall be two years. The Mayor shall designate one of the members of the Board as Chairman.

The Board of Estimates has heretofore by Resolution recommended the creation of "The Gas Appliance Board".

The registration and examination by the Board shall be in the following manner:

Applications shall be made on forms to be furnished by the Building Inspection Engineer of Baltimore City, said application to be accompanied by the sum of Three Dollars ($3.00), and thereafter the Board, or such persons as may be designated by it, shall subject each applicant to an examination testing his knowledge of the trade and work of gas fitting, and such examination may be either oral or in writing, and may be accompanied by such practical demonstration as may be required; provided that nothing in this section

shall be construed to subject any person to examination or registration when engaged purely in making industrial installations or adjustments and any person, firm or corporation engaged in gas fitting, who shall employ or engage any person not registered and examined in accordance with this section to perform such work shall be subject to prosecution hereunder.

In the case of specific types of gas appliances where the Board deems that public safety warrants it, the Board shall require that persons, including those already registered as Gas Fitters of Baltimore City, who engage in the installation of such appliances shall qualify to the Board by additional examination as having the necessary skill and facilities to perform such work. There shall be no charge for such additional examination.

City Code (1927), art. 16, sec. 104. Ord. 436 (1925-26), sec. 8. Ord. 1154 (1949-50), sec. 7.

60F. Whenever the work of a registered gas fitter is believed to be unsatisfactory after inspection, or if a gas fitter shall violate any of the rules and regulations promulgated by the Board, his registration may be suspended or revoked by the Building Inspection Engineer upon written notice by said Building Inspection Engineer to such gas fitter that a hearing will be accorded him on a certain day to show cause why such suspension or revocation should not be made, and after the hearing, the Building Inspection Engineer may suspend temporarily or revoke permanently the registration of any such gas fitter; provided, that whenever the license shall have been revoked permanently, the person shall not be prohibited from reapplying, but such new application shall not be made in a less period than that designated by the Building Inspection Engineer from the date of permanent revocation, and all of the provisions for original applications shall be applicable.

City Code (1927), art. 27, sec. 106. Ord. 436 (1925-26), sec. 10. Ord. 1154 (1949-50), sec. 8.

60G. All gas light, gas lighting lamps and fixtures and appurtenances thereof, shall be exempt from anything contained in this sub-title.

City Code (1927), art. 16, sec. 107. Ord. 436 (1925-26), sec. 11. Ord. 1063 (1926-27). Ord. 361 (1927-28), sec. 11. Ord. 1154 (1949-50), sec. 9.

60H. In order to safeguard and protect the health and safety of the people of Baltimore City, the Board is hereby authorized and empowered to make, adopt and promulgate rules, regulations and specifications governing the design, construction, and performance of all tubing, appliances, appurtenances or devices and/or samples or models thereof for use with, by, or for the combustion of gas as distributed and/or sold in the City of Baltimore provided that all rules, regulations and specifications so made, adopted and promulgated shall be pursuant to but not in conflict with the provisions of this ordinance. The Board in making and adopting said rules, regulations and specifications may consider the rules, regulations and specifications established by the American Standards Associa-

tion, or any other rules, regulations and specifications relating to said subject, and the Building Inspection Engineer may accept the approval of any laboratory or testing agency approved by him in determining whether any tubing, appliances, appurtenances or devices and/or samples or models thereof required by him to be tested under the provisions of this sub-title, or under any rules, regulations or specifications promulgated by the Board under this authority, do in fact meet the tests so prescribed.—

City Code (1927), art. 16, sec. 108. Ord. 361 (1927-28), sec. 11½. Ord. 1154 (1949-50), sec. 10.

60-I. Whenever the Building Inspection Engineer shall determine that before passing upon any application for registration, it is necessary and/or desirable to test in a laboratory or testing agency any tubing, appliance, appurtenance or device offered for registration, in order to determine whether or not the same complies with the rules, regulations or specifications prescribed by the Board under the authority of this sub-title, the Building Inspection Engineer is hereby authorized to direct said tests to be made by the laboratories of either the United States Bureau of Standards, the Johns Hopkins University, the American Gas Association, or any other laboratory or testing agency approved by the Building Inspection Engineer; and the Building Inspection Engineer is hereby further authorized and directed to require the costs of such tests to be paid in advance by the applicant for registration.

Ord. 1154 (1949-50), sec. 11.

60J. Inasmuch as the purpose of this sub-title is to safeguard the people of Baltimore City, the Commissioner of Health of Baltimore City is directed to report any condition which he believes to be hazardous due to the use of any appliance, tubing, appurtenance or device with, by, or for the combustion of gas as distributed and/or sold in the City of Baltimore to the Building Inspection Engineer; and the Building Inspection Engineer is hereby directed to obtain the advice of the Commissioner of Health in any matter in which he deems that such advice may promote the safety and health of the people of Baltimore.

City Code (1927), art. 16, sec. 110. Ord. 436 (1925-26), sec. 13. Ord. 1154 (1949-50), sec. 12.

60K. Any person, firm or corporation violating any of the provisions of this sub-title shall be subject to prosecution either before a Justice of the Peace in Baltimore City, having criminal jurisdiction, or by indictment of the Grand Jury of Baltimore City, and upon conviction shall be subjected to a fine of not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00) for each offense.

HOTELS AND ROOMING HOUSES

City Code (1927), art. 16, sec. 111. Ord. 330 (1917-18). Ord. 544 (1920-21), sec. 1.

61. No person shall conduct, keep, manage, operate or cause to be conducted, kept, managed or operated either as owner, lessee,

agent or in any other capacity, any hotel, rooming house or lodging house within the corporate limits of the City of Baltimore, without having first obtained a permit from the Commissioner of Health of the City of Baltimore entitling him to do so, for the issuance of which permit the Commissioner of Health shall charge a license fee of Two Dollars ($2.00), which permit shall cover a period of one year from the date of its issue, but the said permit may be renewed upon application to the Commissioner of Health by the owner, lessee, agent or other person conducting, keeping, managing or operating the said hotel, rooming house or lodging house upon the approval of such renewal by the Commissioner of Health and for the renewal of each permit the said Commissioner of Health shall charge a fee of One Dollar ($1.00).

City Code (1927), art. 16, sec. 112. Ord. 330 (1917-18), sec. 2.

62. For the purposes of this sub-title the word "person" shall mean and include natural persons, co-partnerships, corporations and associations, and shall include persons of both sexes.

City Code (1927), art. 16, sec. 113. Ord. 330 (1917-18), sec. 3. Ord. 18 (1931-32). Ord. 507 (1941-42), sec. 113.

63. For the purpose of this sub-title, a hotel, rooming house or lodging house shall be and is deemed to be any house or building occupied as the abiding place of five or more individuals, who are not related to the owner or lessee of such house or building and who are lodged in such house or building with or without meals, and in which sleeping rooms, as a rule, are offered to the public for rental or hire singly and as separate units from the other rooms in such house or building.

City Code (1927), art. 16, sec. 114. Ord. 330 (1917-18), sec. 4.

64. The Commissioner of Health, before granting any permit hereunder provided for, shall examine into and investigate the character and qualifications of applicants therefor.

City Code (1927), art. 16, sec. 115. Ord. 330 (1917-18), sec. 5.

65. No permit shall be issued to any person to conduct a hotel, rooming house or lodging house, within the City of Baltimore, unless such person is of ascertained good moral character, and when application for such permit is made the applicant shall present himself in person to the Commissioner of Health, and, at such time, present to such Commissioner of Health satisfactory proof of good moral character. When application for a permit is made by or on behalf of a co-partnership, corporation or association, such application shall be made by the manager, officer, agent or other person who will have the charge and management of such hotel, rooming house or lodging house.

City Code (1927), art. 16, sec. 116. Ord. 330 (1917-18), sec. 6.

66. No permit issued as in this sub-title provided shall be transferred or assigned.

City Code (1927), art. 16, sec. 117. Ord. 330 (1917-18), sec. 7.

67. No person to whom a permit shall be issued, as provided in this sub-title, shall suffer or permit the hotel, rooming house or lodging house, to which such permit relates, to be used as a house of ill-fame, brothel, bawdy house or disorderly house, for the purpose of prostitution, fornication or lewdness; or knowingly suffer any lascivious cohabitation, adultery, fornication or other immoral practice to be carried on therein.

City Code (1927), art. 16, sec. 118. Ord. 544 (1920-21), sec. 7A. Ord. 507 (1941-42), sec. 118.

68. The person to whom a permit shall be issued as provided in this sub-title shall keep and maintain the hotel, rooming house or lodging house to which such permit relates in a cleanly and sanitary condition, and in accordance with all ordinances of the Mayor and City Council of Baltimore relating or pertaining to the hygiene and sanitation of dwellings or houses, and in accordance with such rules and regulations as the Commissioner of Health shall adopt as herein provided; and the Commissioner of Health is hereby authorized and empowered to revoke the permit of any person who refuses, neglects or fails to comply with any of the provisions of this sub-title or any of the provisions of any of the aforesaid ordinances or any of the rules or regulations adopted by the Commissioner of Health as aforesaid; and the Commissioner of Health is hereby authorized and empowered to issue such orders and to make and adopt such rules and regulations as he may deem proper and necessary for the enforcement of this sub-title for the protection of the health of the inhabitants of the City of Baltimore.

City Code (1927), art. 16, sec. 119. Ord. 330 (1917-18), sec. 8.

69. No person to whom a permit shall have been issued to conduct and operate a hotel, rooming house or lodging house, shall in said hotel, rooming house or lodging house sell, barter or exchange spirituous, malt or vinous liquors, or knowingly suffer, permit or allow any spirituous, malt or vinous liquors to be sold, bartered or exchanged, without first having procured a license authorizing him to sell or dispose of such liquors.

City Code (1927), art. 16, sec. 120. Ord. 330 (1917-18), sec. 9.

70. Every person to whom a permit shall have been issued to conduct a hotel, rooming house or lodging house, shall, at all times, keep a standard hotel register, in which shall be inscribed the names of all guests or persons renting or occupying rooms in such house; which register shall be signed by the person renting a room or rooms, or by some one under his direction. Such registration must be made, and after the name or names are so inscribed or registered the manager of the hotel, rooming house or lodging house, or his agent, shall write the number of the room or rooms which such guest or person is to occupy, together with the time when such room is rented. All of which shall be done before such person is permitted to occupy such room or rooms. Such register shall be at all times open to inspection by any guest of the house

wherein such register is kept, and to any executive or peace officer of the City of Baltimore, or of the State of Maryland.

City Code (1927), art. 16, sec. 121. Ord. 330 (1917-18), sec. 10.

71. It shall be unlawful for any person to write or cause to be written in any hotel register, any other or different name than the true name of such person or the name by which such person is generally known.

City Code (1927), art. 16, sec. 122. Ord. 330 (1917-18), sec. 11.

72. No room shall be assigned to two persons of the opposite sex, except in the case of children accompanied by parent or guardian, unless such persons shall be registered as husband and wife.

City Code (1927), art. 16, sec. 123. Ord. 330 (1917-18), sec. 12.

73. Any person to whom a permit shall have been issued, as provided in this sub-title, shall cause each sleeping room and apartment in such hotel, rooming house or lodging house, to which such permit relates, to be numbered in a plain and conspicuous manner, the number to be placed on the outside of the door to such room, and no two doors shall bear the same number.

City Code (1927), art. 16, sec. 124. Ord. 330 (1917-18), sec. 13.

74. Where a permit shall have been issued to any co-partnership, corporation, or association to conduct a hotel, rooming house or lodging house, any person having charge, management or control of such hotel, rooming house or lodging house, shall be liable to prosecution for any violation of the provisions of this sub-title.

City Code (1927), art. 16, sec. 125. Ord. 330 (1917-18), sec. 14.

75. For the purpose of determining the liability of any person or persons to prosecution for violation of any of the provisions of this sub-title, it shall be sufficient to show that such person was at the time of the act of violation complained of the person in actual charge, management or control of the hotel, rooming house or lodging house in which such act is alleged to have been committed.

City Code (1927), art. 16, sec. 126. Ord. 330 (1917-18), sec. 15. Ord. 507 (1941-42), sec. 126.

76. Any person violating any of the provisions of this sub-title, or any lawful order, rule or regulation issued, made or adopted by the Commissioner of Health, pursuant to the authority granted to him by the provisions of this sub-title, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding $100.00.

City Code (1927), art. 16, sec. 127. Ord. 330 (1917-18), sec. 16.

77. Nothing in this sub-title contained shall be construed to apply to any eleemosynary, religious, benevolent or charitable association.

HOUSING BUREAU[1]

Ord. 1543 (1950-51), sec. 1.

77A. A new Bureau, to be known as the Housing Bureau, shall be and it hereby is established in the Department of Health, to which shall be transferred all the personnel, duties, records and pending cases of the office of Housing and Law Enforcement, formerly the Division of Housing of he Sanitary Section. There shall be a Director of said Housing Bureau, who shall be appointed by the Mayor in the mode prescribed under Section 12 of the Baltimore City Charter, and shall hold his office as therein provided. Said Bureau shall in addition be staffed by an Assistant Director and with such additional personnel as the Commissioner of Health may from time to time appoint in accordance with law, subject to the approval of the Board of Estimates. In case any vacancy shall occur in the office of the Director, whether by death, resignation or otherwise, the Assistant Director shall perform all the duties of the Director until the appointment and qualification of the successor to the Director and during the absence due to sickness or other disability of the Director, the Assistant Director shall perform all the duties of the Director. Said Director shall report directly to the

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[1] The preamble to Ord. 1543 (1950-51 reads as follows:

Whereas, a major objective of the Mayor and City Council of Baltimore is to combat successfully slum and blighted areas and prevent their future growth and

Whereas, experience in the City of Baltimore has demonstrated that slum and blighted areas result in large measure from improper maintenance of dwellings, inadequate sanitation, over-crowding of dwellings and general community neglect in these areas and

Whereas, experience has also shown that through well-planned and vigorous enforcement of minimum housing standards for safety, sanitation, population density and public health, these conditions can be relieved and prevented and

Whereas, there has been developed in the City of Baltimore a municipal effort, known as "The Baltimore Plan", for combating residential blight by vigorous housing law enforcement, which program requires for its maximum effectiveness:

(a) Aggressive enforcement of housing ordinances and regulations through the efforts of several of the departments of the City and the utilization of their several enforcement procedures.

(b) Compelling compliance with said ordinances and regulations both in response to complaints and also at the initiative of the City on an area basis.

(c) Centralization in a single office of responsibility for assisting the several city departments involved in housing law enforcement in establishing policies, procedures and techniques which will assure uniform and consistent enforcement, and also for assisting these departments in planning their separate programs to avoid duplications, overlaps and conflicts, and to integrate the housing law enforcement effort with the programs of the Housing Authority of Baltimore City and the Baltimore Redevelopment Commission into an effective campaign against slum and blighted areas and

Whereas the Board of Estimates, prior to the adoption of this ordinance, has recommended the creation of an additional bureau in the Department of Health, to be known as the Housing Bureau, in order to meet the requirements of "The Baltimore Plan" program hereinbefore recited; now therefore

Commissioner of Health and, subject to his approval, shall exercise in the Department of Health the powers hereinafter enumerated. In addition, said Director shall be responsible for assisting the city departments involved in housing law enforcement in developing uniform and consistent policies, procedures and techniques, to the end that any policy differences between said several law enforcement activities may be resolved and a well-planned, comprehensive and consistent attack may be made on the conditions hereinabove described without unnecessary and conflicting harrassment of owners and occupants of sub-standard dwellings.

Ord. 1543 (1950-51), sec. 2.

77B. The Director of the Housing Bureau shall be primarily responsible directly under the Commissioner of Health for the administration and enforcement of the City Housing Code, as enacted by Sections 112-119 of this Article and Sections 63, 68 and 76 of this Article, including all amendments thereto and regulations promulgated by the Commissioner of Health thereunder and said Director shall also be empowered in such administration and enforcement to utilize directly under the Commissioner of Health the powers conferred by Section 148 of Article 16 of the Baltimore City Code (1927 Edition) to the extent that such powers may be needed in order to promote the hygiene of housing. Said Housing Bureau shall be charged with the duty of (a) receiving, handling or referring all complaints under the above mentioned ordinances and regulations concerning the condition of housing, and (b) undertaking enforcement of said ordinances and regulations on a block and area basis, (c) initiating procedures for preventing the development of sub-standard housing and residential blight and deterioration through strict enforcement of said ordinances and regulations and other regulatory controls, (d) establishing, with the approval of the Commissioner of Health, policies and procedures within the Baltimore City Health Department for the administration and enforcement of said ordinances and regulations, which policies and procedures shall be binding upon all other Bureaus, Sections and Divisions of the Baltimore City Health Department.

Ord. 1543 (1950-51), sec. 3.

77C. The Director of said Housing Bureau shall have the duty and authority to promote the above described program by inviting and stimulating the cooperation, interest and support of individual citizens and citizens' groups, and by the education of owners and occupants of sub-standard dwellings in blighted residential areas. For this purpose, as well as for the general planning of said program, said Director shall have the benefit of an advisory council, consisting of not fewer than nine (9) persons, appointed from time to time by the Mayor.

INFANTS—CARE OF

Ord. 984 (1929-30), secs. 1, 2.

78. (a) No midwife, no person, no corporation, and no home or institution not duly incorporated for such purpose shall receive

infants or young children for the purpose of caring for them with a view to compensation without first securing a license from the Commissioner of Health, and paying therefor the sum of One Dollar ($1.00), which license shall be renewable annually as of the date of the original license and upon payment of the sum of One Dollar ($1.00).

(b) Before granting the original license the Commissioner of Health shall require each application to be endorsed by four (4) reputable citizens and as far as possible thereafter a record shall be kept by the Commissioner of Health, based upon such information as shall be obtained by agents or inspectors of the Department of Health and/or from other sources, containing the full name and address of each infant or child received, the date of its birth, the date of its reception, and in case of a change in address, the date and place of its removal.

Ord. 984 (1929-30), sec. 3.

79. Before issuing said original license the home or institution of each applicant shall be visited by an agent or inspector of the Commissioner of Health, and a full investigation made as to the sanitary conditions, accommodations, the ability and fitness of the applicant to take charge of infants and young children, and such other information bearing on the subject as in the opinion of the Commissioner of Health may be necessary or desirable shall be obtained, and the agent's or inspector's report and recommendation may be a basis for granting or rejecting the application for such license. The Commissioner of Health may also base his action in granting or rejecting the application for any renewal of such license upon information received from any agent or inspector of the Commissioner of Health as to the sanitary conditions, accommodations, the ability and fitness of the applicant to take charge of infants and young children, and such other information, bearing on the subject (as revealed by the agent's or inspector's report and recommendation, or as may come to the notice of said Commissioner of Health) as he may deem relevant.

Ord. 984 (1929-30), sec. 4.

80. Any midwife, any person, any corporation and any home or institution not duly incorporated for such purpose, who or which shall receive or board an infant or child under three (3) years of age with a view to compensation without being in possession of such license, shall be deemed guilty of misdemeanor, and upon conviction thereof shall be fined Twenty-five Dollars ($25.00) and costs for each and every offense, one-half of the said fine to be paid to the informer,[1] and upon failure to pay the fine imposed and the costs of the proceedings, the person or persons so convicted shall be committed by the Court or justice who imposed such fine, to the City Jail for a period not less than ten (10) days, nor more than thirty (30) days.

[1] Informers fees abolished by Sec. 3 of Art. 38 of the An. Code of Md. (1939 Ed.)

Ord. 984 (1929-30), sec. 5.

81. The provisions of this sub-title shall in no way be regarded as applying to such persons or homes as may be recommended by the Department of Welfare of Baltimore City.[1]

MORGUE

City Code (1927), art. 16, sec. 324. 1893, art. 23, sec. 199. Ord. 156, July 9, 1890. Ord. 571 (1946-47), sec. 324.

82. The city shall maintain a building to be used as a morgue for the reception and preserving for identification of the bodies of unknown persons dying within the limits of the City of Baltimore, and such other bodies as may be directed to be placed therein by the Chief Medical Examiner, or his representative, of Baltimore City, except the bodies which may be so far decomposed as to be beyond the probability of recognition.

City Code (1927), art. 16, sec. 325. 1893, art. 23, sec. 200. Ord. 156, July 9, 1890.

83. All bodies not identified and claimed shall remain in said morgue or dead-house for at least one day, or for such a length of time as the Commissioner of Health may deem proper and necessary. In the erection of said morgue such arrangements shall be made as may be deemed necessary for the proper preservation of the bodies.

City Code (1927), art 16, sec. 326. 1893, art. 23, sec. 201. Ord. 156, July 9, 1890. Ord. 571 (1946-47), sec. 326.

84. A room shall be provided in said morgue for the preservation of the clothing and effects for purpose of identification of all deceased persons buried therefrom, which clothing and effects shall be carefully numbered and retained for twelve months, after which time it shall be disposed of in accordance with the provisions of law.

City Code (1927), art. 16, sec. 330. 1893, art. 23, sec. 205. Ord. 2, February 5, 1891.

85. The Commissioner of Health is hereby enjoined and empowered to make all regulations governing the morgue, and the care and delivery of bodies and effects of deceased persons received therein.

City Code (1927), art. 16, sec. 331. 1893, art. 23, sec. 206. Ord. 2, February 5, 1891.

86. The Commissioner of Health shall have general charge and supervision of, and shall make such rules and regulations as may be necessary for, the proper conduct of the morgue, and such regulations shall be observed and enforced by said keeper.

MOSQUITOES

City Code (1927), art. 16, sec. 128. Ord. 184 (1906-07), sec. 1.

87. It shall be unlawful to set up, have, keep or maintain on any premises in the City of Baltimore, from the first day of May

[1] Sec. 6, Ord. 984 (1929-30), repealed all ordinances, local laws inconsistent therewith to extent of inconsistency.

to the first day of October in each and every year, any cistern, tank or well that is not screened with wire mesh not coarser than eighteen wires to the inch both ways, or in such other manner and with such other material, approved by the Commissioner of Health of the City of Baltimore, as will thoroughly prevent the ingress or egress of mosquitoes to and from the water therein contained during said months of each year, provided, however, that no water seal shall be used in screening any such inlets or outlets.

City Code (1927), art. 16, sec. 129. Ord. 184 (1906-07), sec. 2.

88. It shall be unlawful to have, keep or maintain on any premises or in any lot, cemetery, park or square in the City of Baltimore, any pond, pool, fountain, trough, urn or water receptacle of any similar character or kind, from the first day of May to the first day of October in each and every year, unless the same is kept constantly covered with kerosene oil, or stocked with mosquito destroying fish or covered with the protective wire netting specified in Section 87 during said months of each year.

City Code (1927), art. 16, sec. 130. Ord. 184 (1906-07), sec. 3.

89. It shall be unlawful between the first day of May and the first day of October in each and every year, to have or keep on any premises in the City of Baltimore, water in any can, pitcher, bowl, bottle, bucket, barrel, trough or other receptacle, unless the same be thoroughly emptied, dried or cleaned every five (5) days before being refilled; provided, however, that fire barrels may be maintained on premises, provided they are properly screened with 18x18 wire mesh, as specified in Section 87, but all fire buckets shall be maintained empty, or if maintained full they shall be thoroughly emptied, dried or cleaned every five days before being refilled.

City Code (1927), art. 16, sec. 131. Ord. 184 (1906-07), sec. 4.

90. It shall be unlawful to have or maintain on any premises in the City of Baltimore from the first day of May to the first day of October in each and every year, any open well, unless the same be constantly closed or screened as above provided, so as to prevent the ingress or egress of mosquitoes to and from the water therein contained, and the drawing of water therefrom be operated by pumps.

City Code (1927), art. 16, sec. 132. Ord. 184 (1906-07), sec. 5.

91. It shall be unlawful to have or maintain any gutter or drain or roof in the City of Baltimore, in or on which water stands after rains, without draining off thoroughly.

City Code (1927), art. 16, sec. 133. Ord. 184 (1906-07), sec. 6.

92. It shall be unlawful to have, keep, or maintain on any premises in the City of Baltimore from the first day of May to the first day of October in each and every year, any open cesspool or privy vault, to the liquid contents of which mosquitoes have ingress

or egress, unless the same be thoroughly covered with petroleum oil every fifteen days from the said first day of May to the first day of October in each and every year.

City Code (1927), art. 16, sec. 134. Ord. 184 (1906-07), sec. 7.

93. Every lot or square in the City of Baltimore on which water stands in pools or ponds, or which contains excavations or holes or depressions in which water may stand, which in the judgment of the Commissioner of Health of the City of Baltimore is near enough to any house or houses to subject the occupants thereof to danger of being bitten by mosquitoes bred in such water, is hereby declared a menace to public health, and the owner thereof who, after notice by said Commissioner of Health, shall fail, within the time in such notice specified, to fill or drain the same, or keep it covered with petroleum oil, shall be deemed guilty of a violation of this sub-title.

City Code (1927), art. 16, sec. 135. Ord. 184 (1906-07), sec. 8.

94. It shall be unlawful to set up, have, keep or maintain in any house or hotel any water closet furnished with a tank or basin with water seal, unless such tanks or basins be emptied and the water therein renewed at least once in five days, from the first day of May to the first day of October in each and every year, or be kept during the same period thoroughly covered with kerosene oil.

City Code (1927), art. 16, sec. 136. Ord. 184 (1906-07), sec. 9.

95. The Commissioner of Health of the City of Baltimore shall cause this sub-title to be enforced in all its provisions, and to that end said Commissioner and persons acting under his authority shall have the right at any time from 9 A. M. to 4 P. M. each day to enter upon premises, lots, squares and parks, and any person charged with any of the duties imposed by this sub-title failing, after notice by said Commissioner and within the time prescribed by such notice, to perform such duties, shall be deemed guilty of a violation of this sub-title, and for each day after the expiration of said notice that the party notified fails to comply with said notice, he shall be guilty of a separate violation of this sub-title; provided, however, that no notice from the Commissioner of Health shall be required to hold any person liable to penalties for violations of Sections 87, 88, 89, 90, 92 and 94 of this Article, the provisions of which sections are declared to be self-operative and imperative; but in cases under those sections where screening has been improperly done originally, or where the screening has gotten out of order, or has been injured and rendered defective without the knowledge of the owner, or if absent, his agent, then the penalties shall be imposed only on failure, after notice, to make the necessary changes or repairs.

City Code (1927), art. 16, sec. 137. Ord. 184 (1906-07), sec. 10.

96. The owners, and in their absence, the agents of owners of all premises, lots, squares and parks in the City of Baltimore, shall be liable for violations of the provisions of Sections 87, 90, 91 and

93 of this Article, except in cases where, without the knowledge of such owner or agent, the tenant of or trespasser on any premises, lot, square or park shall violate the provisions of this sub-title, in which event such tenant or trespasser shall be liable for such violation; when the premises are vacant, or are occupied jointly by the owner and his tenants or sub-tenants, the owner, or in his absence, his agent, shall be liable for violations of Sections 88, 89, 92 and 94 of this Article. The tenants or occupants of all premises, lots, etc., shall be liable for violations of Sections 88, 89, 92 and 94 of this Article, and in the case above provided, for violations of Sections 87, 90, 91 and 93 thereof.

City Code (1927), art. 16, sec. 138. Ord. 184 (1906-07), sec. 11.

97. Any person who shall violate any provision or section of this sub-title, shall be punished by a fine of not more than ten ($10) dollars. Each and every day of failure to comply with any of the provisions of this sub-title shall constitute a separate offense and be punished as such.

City Code (1927), art. 16, sec. 139. Ord. 2 (1915-16), sec. 1.

98. In order to get rid of the discomfort and annoyance and danger to health from mosquitoes, the following regulations are hereby ordained:

It shall be the duty of the Sanitary Engineer and his Assistants and employees, to perform the duties imposed upon him by Sections 98-105 of this Article and it shall be the duty of all owners and agents having charge of property within the limits of the City of Baltimore, and all tenants and occupiers of any land and premises within the city limits to obey the said regulations, as follows:

It shall be unlawful to have, cause, maintain or permit within the municipality of Baltimore, any collection of standing or flowing water in which mosquitoes breed, or are likely to breed, unless such collection of water is treated so as to effectually prevent such breeding.

City Code (1927), art. 16, sec. 140. Ord. 2 (1915-16), sec. 2.

99. The collections of water referred to in Section 98 of this Article shall be held to be those contained in ditches, gutters, rain gutters or roof gutters, ponds, pools, excavations, holes, depressions, open cess-pools, privy vaults, fountains, cisterns, tanks, shallow wells, barrels, troughs (except horse troughs in frequent use), urns, cans, boxes, bottles, tubs, buckets, or other similar containers.

City Code (1927), art. 16, sec. 141. Ord. 2 (1915-16), sec. 3.

100. The methods of treatment of the collections of water specified in Section 99 so as to prevent breeding of mosquitoes shall be any one or more of the following:

(a) Screening with wire netting of at least 16 meshes to the inch each way, or any other material which will prevent the ingress or egress of mosquitoes.

(b) Complete emptying every 7 days, or at shorter periods, of unscreened containers.

(c) Using a larvicide approved and applied under the direction of Dr. Henry R. Carter, Assistant Surgeon General of the United States, or any one deputized by him for that purpose.

(d) Covering completely once every 7 days the surface of the water with kerosene, petroleum or paraffine oil in sufficient quantities to remain covered at least 12 hours each time.

(e) Cleaning and keeping sufficiently free of vegetable growth and other obstructions, and stocking with mosquito destroying fish; absence of halfgrown or larger mosquito larvae to be evidence of compliance with this measure.

(f) Filling or draining to the satisfaction of the Sanitary Engineer of Baltimore City, or any one deputized by him for that purpose.

(g) The removal of tin cans, tin boxes, broken or empty bottles and similar articles likely to hold water, at least once every 7 days. If not removed they must be so completely destroyed as not to be able to hold water.

City Code (1927), art. 16, sec. 142. Ord. 2 (1915-16), sec. 4.

101. The natural presence of mosquito larvae in standing or running water shall be evidence that mosquitoes are breeding there, and failure by the owner or occupant of the premises to prevent such breeding within five days after notice from the Sanitary Engineer, shall be deemed a violation of this ordinance.

City Code (1927), art 16, sec. 143. Ord. 2 (1915-16), sec. 5.

102. Should the person or persons responsible for conditions giving rise to the breeding of mosquitoes, fail or refuse to take necessary measures to prevent the same within ten days after due notice has been received, the Sanitary Engineer is hereby authorized to do so, and all necessary costs incurred by him shall be a charge against the property owner or other person offending, as the case may be.

City Code (1927), art. 16, sec. 144. Ord. 2 (1915-16), sec. 6.

103. The Sanitary Engineer and the Police Department shall enforce the provisions of Sections 98-105 of this Article, and for this purpose may at all reasonable times enter in and upon any premises within the limits of Baltimore City, and any person or persons charged with any of the duties imposed by Sections 98-105 failing, within the time designated by said sections or within the time stated in any notice served in pursuance hereof, as the case may be, to perform such duties, shall be deemed guilty of a violation of said sections, and each day after the expiration of such time that said person fails to comply with said sections shall be deemed a separate violation of said sections.

City Code (1927), art. 16, sec. 145. Ord. 2 (1915-16), sec. 7.

104. The owner of the premises, and in his absence, the agent of the owner, shall be held under Sections 98-105 to be responsible for the prevention or correction of conditions giving rise to, or likely to give rise to, breeding of mosquitoes, providing any tenant, trespasser or other persons causing said conditions without the knowledge or consent of the owner or agent shall be held responsible.

City Code (1927), art. 16, sec. 146. Ord. 2 (1915-16), sec. 8.

105. Any person who shall violate any provision of Sections 98-105 of this Article shall on each conviction be subject to a penalty of not less than one nor more than ten dollars, to be collected as other penalties imposed by ordinance, and the payment of any costs incurred under Section 102 hereof.

NUISANCES AND THE PREVENTION OF DISEASE[1]

City Code (1927), art 16, sec. 147. 1879, art. 23, sec. 14. 1893, art. 23, sec. 23. Ord. 561 (1946-47).

106. It shall be the duty of the Commissioner of Health to inspect or cause to be inspected all the streets, lanes, alleys, wharves, warehouses, cellars, yards, lumber yards, lots and docks of the city, and all other places he may deem necessary, and to enforce all laws and ordinances having any relation to health, and to remove or cause to be removed all nuisances.

City Code (1927), art. 16, sec. 148. 1879, art. 23, sec. 15. 1893, art. 23, sec. 24. Ord. 57 (1903-04).

107. It shall be the duty of the Commissioner of Health to carefully inspect all lots, grounds, suspected cellars, premises, possessions, streets, lanes and alleys within the City of Baltimore; and whenever he shall be of opinion that any of said lots, grounds, suspected cellars, premises, possessions, streets, lanes and alleys within the city are in a state of nuisance, or in such a condition that in warm or unhealthy seasons a nuisance may be thereby created and the health of the citizens endangered, it shall be his duty, and he is hereby directed, to notify the owner or owners, occupier or occupiers, of such lots, grounds, suspected cellars, premises and possessions, and the owner or owners, occupier or occupiers, of the property fronting on such streets, lanes and alleys, his, her or their agents, to have said nuisance, or cause of said nuisance, removed and abated within the time and in the manner prescribed in said notice; and if the said owner or owners, occupier or occupiers, his, her or their agents, shall neglect or refuse to comply with the terms of said notice, the said Commissioner, upon the expiration of the time set out in the notice, is hereby directed and empowered to remove the said nuisance, or cause of said nuisance, at the expense of said owner or owners, occupier or occupiers; and the cost

[1] As to what constitutes a nuisance, see King v. Hamill, 97 Md. 103. See also Block v. Balto., 149 Md. 39, and digest of cases under sec. 6, sub-sec. 11, of City Charter (1949 Ed.).

of removing said nuisance, or cause of said nuisance, may be recovered by the said Commissioner in the name of the Mayor and City Council of Baltimore from the said owner or owners, occupier or occupiers, by suit if necessary; and, in addition thereto, the said owner or owners, occupier or occupiers, who shall neglect and refuse to comply with the terms and conditions of said notice, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than Ten Dollars ($10), nor more than One Hundred Dollars ($100).

Mayor v. Hughes, 1 G. & J. 480; Canton Co. v. State, 126 Md. 352; King v. Hamill, 97 Md. 103.

City Code (1927), art. 16, sec. 149. 1879, art. 23, sec. 16. 1893, art. 23, sec. 25.

108. In case no agent, occupier or owner can be found on whom to serve such notice, the said Commissioner is hereby authorized after giving five days' public notice in one or more of the daily newspapers published in the city, to have any nuisance or cause of nuisance removed at the expense of the city in the first instance, and the Treasurer shall keep an account of the expenses incurred, to be recovered from the owner when ascertained and found.

Tenement Houses

City Code (1927), art. 16, sec. 154. 1893, art. 23, sec. 30. Ord. 79, June 4, 1886.

109. No owner, lessee, or keeper of any tenement, boarding or lodging-house shall cause, or allow the same to be over-crowded, or cause or allow too great a number of persons to dwell, be, or sleep in any such house, or portion thereof, as thereby to cause any danger or detriment to life or health.

City Code (1927), art. 16, sec. 155. 1893, art. 23, sec. 31. Ord. 79, June 4, 1886.

110. Every tenement or loadging-house, and every part thereof, shall be kept clean and free from any accumulation of filth, garbage, or other matter, in or on the same, or in the yard, court, area, passage or alley connected with or belonging to the same; the owner or lessee of any lodging or tenement house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, and privies, to the satisfaction of the Commissioner of Health, as often as shall be required by said Commissioner, and shall also whitewash the walls and ceilings thereof at least once in each year.

City Code (1927), art. 16, sec. 156. 1893, art. 23, sec. 32. Ord. 79, June 4, 1886.

111. Any person or persons, owner or owners, agent or lessee, of any tenement or lodging-house violating any of the six preceding sections, shall be subject to a fine or penalty of Twenty Dollars, and a further fine of Five Dollars for every day thereafter that he, or she, or they, neglect to comply therewith.

HYGIENE OF HOUSING

Ord. 384 (1940-41), sec. 156A. Ord. 902 (1942-43), sec. 156A.

112. Every dwelling and every part thereof shall be kept clean and free from any accumulation of dirt, filth, rubbish, garbage or similar matter, and shall be kept free from vermin or rodent infestation. All yards, lawns and courts shall be similarly kept clean and free from rodent infestation. It shall be the duty of each occupant of a dwelling unit to keep in a clean condition that portion of the property which he occupies or over which he has exclusive control. If the occupant shall fail to keep his portion of the property clean the Commissioner of Health may send a written notice to the occupant to abate such nuisance within the time specified in said notice; provided, however, that when in the opinion of the Commissioner of Health such nuisance constitutes an actual menace to health he shall proceed forthwith to cause such nuisance to be abated. Failure of the occupant to comply with such notice shall be deemed a violation of this sub-heading and upon conviction the occupant shall be subject to the penalty or penalties herein provided.

It shall be unlawful for any person wilfully or maliciously to deposit any material in any toilet, bath tub, sink or other plumbing fixture which may result in the obstruction of any saintary sewer. This liability on the part of the occupant shall not relieve the owner of the responsibility of cleaning any resultant chokage but shall subject the occupant to the penalties of this sub-heading upon proper proof of such wilful or malicious act.

Ord. 384 (1940-41), sec. 156B.

113. Every dwelling and every part thereof shall be maintained in good repair by the owner or agent, and fit for human habitation. The roof shall be maintained so as not to leak, and all rain water shall be drained and conveyed therefrom so as not to cause dampness in the walls or ceilings.

Ord. 384 (1940-41), sec. 156C. Ord. 902 (1942-43), sec. 156C.

114. Whenever any dwelling, or any building, structure, excavation, business pursuit, matter, condition or thing in or about a dwelling or the lot on which it is situated, or the plumbing, sewerage, drainage, light or ventilation thereof, is found by the Commissioner of Health to be dangerous or detrimental to life or health, the Commissioner of Health may order that the matter, condition or thing be removed, abated, suspended, altered or otherwise improved, as his order shall specify. If any such order of the Commissioner of Health, issued under the authority of the provisions of this section, is not complied with within ten days after the service thereof, or within such shorter time as he may designate as being necessary under the circumstances, then such order may be executed by said Commissioner of Health through his officers, agents, employees or contractors, and the expense incurred incident to said order shall be paid by the owner of said property, and until so paid shall be a lien upon the realty and recoverable as other liens

on realty in Baltimore City, or he may order the premises vacated; provided, however, that when in the opinion of the Commissioner of Health such matter, condition or thing is in a state of nuisance which constitutes an actual menace to health he shall proceed forthwith to cause such nuisance to be abated, but in no case shall a lien attach to the property unless a notice, as hereinbefore provided, has been issued.

Ord. 384 (1940-41), sec. 156D.

115. Before proceeding to execute such order, the Commissioner of Health shall post a notice on the front of the building, stating that since such order was not complied with within the time mentioned in said notice, the Commissioner of Health will proceed to execute the same at the expiration of an additional five days and charge the cost thereof to the owner of the premises. A copy of such notice shall be sent to the owner of the property, or his agent, if names and addresses, on diligent search, can be ascertained, and such notice shall be posted on said premises at least five days before the Commissioner of Health proceeds to incur expenses, unless the condition is of such a character requiring immediate action, in which case the time of the notice shall be such as, in the judgment of the Commissioner of Health, is reasonable and proper. The Commissioner of Health shall deliver a copy of said expenses to the Bureau of Liens, and the clerk in charge of said bureau shall record or file the same in a book or file open to public inspection.

Ord. 384 (1940-41), sec. 156E.

116. Whenever it shall be found by the Commissioner of Health that a dwelling is unfit for human habitation, or dangerous to life or health by reason of want of repair, or defects in the drainage, plumbing, lighting, ventilation or the construction of the same, or by reason of the existence on the premises of any condition likely to cause sickness or injury among the occupants of said dwelling, or for any other causes affecting the public health, the Commissioner of Health may issue an order requiring such dwelling to be vacated. A copy of such order shall be posted on the front of the dwelling at least ten days before it shall be effective, unless the situation is of a character requiring immediate action, in which case the effective time of the order shall be such as in the judgment of the Commissioner of Health is reasonable and proper. A copy of such order shall be sent to the owner of the property, or his agent, if names and addresses, on diligent search, can be ascertained. The dwelling so ordered to be vacated shall not again be occupied until a written statement shall have been secured from the Commissioner of Health, showing that the dwelling or its occupation has been made to comply with this or any other existing law.

Ord. 384 (1940-41), sec. 156F.

117. Whenever any person or persons shall be in actual possession of or have charge, care or control of any property within the city, as executor, administrator, trustee, guardian or agent, such

person shall be deemed and taken to be the owner or owners of such property within the true intent and meaning of this sub-heading, and shall be bound to comply with the provisions of this sub-heading to the same extent as the owner, and notice to any such person of any order or decision of the Commissioner of Health shall be deemed and taken to be a good and sufficient notice, as if such person or persons were actually the owner or owners of such property.

Ord. 384 (1940-41), sec. 156G.

118. The Commissioner of Health is hereby authorized and empowered to make and adopt such rules and regulations as he may deem proper and necessary for the enforcement of this ordinance for the better protection of the health of the city.

Ord. 384 (1940-41), sec. 156H.

119. Any person violating any of the provisions of Sections 112-119, or any lawful order or regulation made and adopted by the Commissioner of Health in pursuance thereof, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding $50.00 and each day's violation shall constitute a separate offense.

Removal of Nuisance

City Code (1927), art. 16, sec. 157. 1879, art. 23, sec. 17. 1893, art. 23, sec. 33.

120. Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars.

City Code (1927), art. 16, sec. 158. 1879, art. 23, sec. 18. 1893, art. 23, sec. 34.

121. Whenever the Commissioner of Health shall be of opinion that the navigation at any of the wharves or docks, from not being sufficiently deepened and cleaned, is in such a condition that a nuisance may be created thereby, he shall cause a notice to be served upon the occupier or occupiers, agent or agents, owner or owners of any wharf or wharves, dock or docks, to deepen or cleanse the navigation at any wharf or dock in such manner as may be prescribed in such notice; and if such owner or owners, occupier or occupiers, agent or agents shall neglect or refuse to deepen or cleanse the same, each person so offending shall forfeit and pay Ten Dollars, and the further sum of Five Dollars for each and every day he, she or they shall so neglect or refuse, and shall moreover pay the expense incurred in case the navigation of such wharf or dock shall be deepened and cleansed under the authority and direction of said commissioner, which he is hereby authorized to cause to be done on such neglect or refusal, within five days, under the superintendence of the Harbor Engineer.

City Code (1927), art. 16, sec. 159. 1879, art. 23, sec. 19. 1893, art. 23, sec. 35.

122. The Commissioner of Health is hereby empowered and required to substitute draining in low grounds, instead of filling them up, in all instances where, in his opinion the draining will as effectually answer the intended purpose.

City Code (1927), art. 16, sec. 160. 1879, art. 23, sec. 20. 1893, art. 23, sec. 36.

123. Whenever the Commissioner of Health, in proceeding to remove nuisances, shall discover that the nuisance complained of originates on an adjoining lot or lots, it shall be his duty to enter thereon, and the owner or owners, occupier or occupiers of such lots, or his, her or their agents, on neglect or refusal to remove such cause of nuisance after notice from said Commissioner, shall forfeit and pay for every such neglect or refusal the sum of Twenty Dollars.

City Code (1927), art. 16, sec. 161. 1879, art. 23, sec. 21. 1893, art. 23, sec. 37.

124. If there be no owner, occupier, or agent of owner, of any lot or premises upon whom such notice can be served, notice shall be deemed in all respects sufficient, if exposed in some open way upon the lot or premises to which it refers.

City Code (1927), art. 16, sec. 162. 1879, art. 23, sec. 22. 1893, art. 23, sec. 38.

125. It shall be the duty of the Commissioner of Health to carry into effect the provisions of Sections 107 and 123, and in all cases embraced within the operation of said sections, when there is no occupier of the property, and the owner or agent thereof does not reside in the City of Baltimore, to give notice in one or more of the newspapers published in the City of Baltimore, for such time as he may consider reasonable, requiring such owner or agent to remove the nuisance to be mentioned in said notice, by some day therein fixed, and upon failure to comply with such notice, the said nuisance shall be removed under the direction of the said Commissioner of Health, and the expense of removing the same, together with the cost of such advertising, shall be a lien upon the entire property where such nuisance may be found to exist.

City Code (1927), art. 16, sec. 163. 1879, art. 23, sec. 23. 1893, art. 23, sec. 39.

126. After the Commissioner of Health has completed the removal of nuisances in the way contemplated by the provisions of this sub-heading, and the amount of penalty incurred, or the amount of expenses to which the corporation has been put by said removal shall be unpaid, the said expenses and penalty shall forthwith become a lien upon the lot or premises from which the nuisance may have been removed; and when judgment in due course of time shall have been obtained for said amount, or any one of them,

against the owner or owners of the premises, the property shall be sold under due legal process.

City Code (1927), art. 16, sec. 165. 1879, art. 23, sec. 25. 1893, art. 23, sec. 41.

127. Whenever any person or persons shall be in actual possession of, or have charge, care or control of, any property within the City, as executor, executrix or executors, administrator, administratrix or administrators, trustee or trustees, guardian or guardians, agent or agents, such person or persons shall be deemed and taken to be the owner or owners of such property, within the true intent and meaning of the several ordinances of the city, and shall be bound to remove all nuisances from such property, and to comply with all the provisions of any ordinance of the city in relation to the health of the City, so far as the same may affect such property, in the same manner, and under the same penalties, fines and forfeitures, as if such person or persons were actually the owner or owners of such property, and notice to any such person or persons of any order of the Commissioner of Health shall be deemed and taken to be as good and sufficient notice as if such person or persons were actually the owner or owners of such property.

City Code (1927), art. 16, sec. 166. 1879, art. 23, sec. 26. 1893, art. 23, sec. 42.

128. Whenever the Commissioner of Health shall discover that any nuisance complained of proceeds from the leakage of any hydrant or hydrants, pipe or pipes, situated on an adjoining lot or lots, cellar or cellars, he shall have the power, and he is hereby authorized to require the owner or owners, occupier or occupiers of such lot or lots, cellar or cellars, to remove the cause of such nuisance.

City Code (1927), art. 16, sec. 167. 1879, art. 23, sec. 27. 1893, art. 23, sec. 43.

129. If any person shall fail to comply with the directions of the Commissioner of Health, he shall have power, and he is hereby authorized and empowered to cause any nuisance or cause of nuisance to be removed, the cost thereof to be paid by said person.

City Code (1927), art. 16, sec. 168. 1879, art. 23, sec. 28. 1893, art. 23, sec. 44.

130. All cellars and vacancies under stores, warehouses and dwellings, upon made ground, shall, when deemed necessary by the Commissioner of Health, be filled up with sound materials and paved with hard bricks or stones; and when deemed expedient by the said Commissioner, the lots thereto appertaining shall be filled up above the level of the street, so as to prevent the lodgment of water on the premises.

City Code (1927), art. 16, sec. 169. 1879, art. 23, sec. 29. 1893, art. 23, sec. 45.

131. All wooden buildings that are now or may hereafter be below the level of the brick pavements or streets, shall be raised up

and underpinned with brick or stone, and all persons refusing or neglecting to obey the directions of the Commissioner of Health in the premises, shall forfeit and pay a penalty not exceeding twenty dollars, and five dollars for each and every day during the continuance of such neglect or refusal; provided, he, she or they, receive one month's notice from the Commissioner of Health to complete the same.

City Code (1927), art. 16, sec. 170. 1879, art. 23, sec. 30. 1893, art. 23, sec. 46.

132. All lumber and wood yards within the limits of the City of Baltimore shall be raised and graded in such a manner that water will not stand therein, and that the lumber or wood placed in said yards shall be raised at least twelve inches above the surface of the ground, so that the air may circulate freely under such lumber or wood; and it shall be the duty of the Assistant Commissioner of Health to cause a copy of this section to be served on the owner or owners, or his, her or their agent, and on the occupier or occupiers of any lumber or wood yard in this city, on or before the first day of April in each and every year; and every owner or occupier of any lumber or wood yard, after being served with a copy of this section, shall comply with the requirements thereof on or before the first day of June, in each and every year; and every person neglecting or refusing so to do, shall forfeit and pay a sum not exceeding Fifty Dollars, and for every twenty-four hours, he, she or they shall neglect or refuse to comply with the same, a further sum of Ten Dollars.

City Code (1927), art. 16, sec. 171. 1879, art. 23, sec. 31. 1893, art. 23, sec. 47. Ord. 396 (1948-49).

133. It shall be the duty of each and every occupier of any house, or owner of any lot within the city limits, fronting any public or private street, lane or alleys, to keep the gutter in front of said house or lot clean at all times. Each and every person failing or refusing to comply with the provisions of this section, after notice so to do, shall be subject to a penalty of Five Dollars ($5.00) for each such failure or refusal.

City Code (1927), art. 16, sec. 172. 1879, art. 23, sec. 32. 1893, art. 23, sec. 48.

134. If any person shall cast or throw, discharge or cause to flow into any of the streets, lanes or alleys of this city, any blood or foul or nauseous liquid, or other liquid or offensive matter which is likely to become a source of nuisance after exposure to the atmosphere, or shall keep, collect, use or suffer to remain on his or her premises any nauseous liquor, stagnant water or other offensive matter, he, she or they so offending shall forfeit and pay for each and every such offense a sum not exceeding Twenty Dollars.

City Code (1927), art. 16, sec. 173. 1893, art. 23, sec. 49. Ord. 112, May 18, 1880.

135. It shall not be lawful for any person or persons, owner or owners of any coal oil refinery to permit any refuse coal oil matter,

or other offensive liquid, which is likely to become a source of nuisance after exposure to the atmosphere, to flow into any of the streets, lanes or alleys of the City of Baltimore, under a penalty of Twenty Dollars for each and every such offense; to be collected as other fines and penalties are now collected.

City Code (1927), art. 16, sec. 174. 1879, art. 23, sec. 33. 1893, art. 23, sec. 50.

136. If any person having a cow or cows, horse or horses, in any stable within the city, shall keep the same in such manner that the filth and stench therefrom shall become offensive to or annoy any neighbor or other person, the person keeping such cow or horse as aforesaid, shall forfeit and pay for every such offense Five Dollars, and the further sum of Five Dollars for each and every day the nuisance shall be suffered to remain, notice having first been given to the party offending.

Metropolitan Savings Bank v. Manion, 87 Md. 68; King v. Hamill, 97 Md. 103.

City Code (1927), art. 16, sec. 175. 1879, art. 23, sec. 34. 1893, art. 23, sec. 51.

137. No person shall cast, throw, draw out or deposit any dead carcass, or any part or parts thereof, dead fish, or any excrement or filth from vaults or privies, necessary houses or water-closets, on or into any part of the city, nor shall any person permit the same to be deposited on his or her premises without effectually covering the same within five hours after such deposit, with and under such a body of earth as will and shall entirely prevent any noxious effluvia or any offensive smell arising from the same, under a penalty not exceeding Twenty Dollars for each and every offense, together with the expense of removing the same.

City Code (1927), art. 16, sec. 176. 1879, art. 23, sec. 35. 1893, art. 23, sec. 52.

138. It shall not be lawful for any person or persons to deposit on any lot within the city limits, any manure or nuisance of any kind, without the consent of the property-holders adjoining said lot be first procured and filed in the office of the Commissioner of Health, under the penalty of Five Dollars for each and every offense, and Five Dollars for each and every day said nuisance may remain, to be recovered as other fines and forfeitures for violations of city ordinances.

City Code (1927), art. 16, sec. 177. 1879, art. 23, sec. 36. 1893, art. 23, sec. 53.

139. No person or persons shall be allowed to deposit upon his or her premises, or any other premises or lot, within the city limits, the cleanings of any slaughter house, fish dealer's house or yards, or any other branch of trade, making filth, for any purpose whatsoever; nor shall any person or persons be allowed to receive or deposit upon his or her premises, within the city limits, any dead animal or part or parts thereof, or green bones, or any other offen-

sive articles, under a penalty of not less than Five Dollars, nor more than Twenty Dollars, for each and every offense.

City Code (1927), art. 16, sec. 178. 1879, art. 23, sec. 37. 1893, art. 23, sec. 54.

140. No person or persons shall be permitted to remove any such things, enumerated in the preceding section, from his or her premises, to any other premises within the city limits, under a penalty of Five Dollars for each offense.

City Code (1927), art. 16, sec. 179. 1879, art. 23, sec. 38. 1893, art. 23, sec. 55.

141. Any person or persons living outside of the city, who shall bring any of the filth heretofore mentioned and deposit the same on any premises within the city limits, shall be subject to a fine of Five Dollars.

City Code (1927), art. 16, sec. 180. 1879, art. 23, sec. 39. 1893, art. 23, sec. 56.

142. The preceding three sections shall not be construed as to prohibit dealers in bones from purchasing the same, and depositing the same on such premises as the said dealers may occupy and use for that purpose; provided, however, that green bones, or such as have flesh or fatty matter on them, shall not be kept by any dealer in them having his place of business within the city limits, longer than twelve hours.

City Code (1927), art 16, sec. 181. 1879, art. 23, sec. 40. 1893, art. 23, sec. 57.

143. It shall not be lawful for any person or persons or body corporate to dump or place any oyster shells within the corporate limits of the City of Baltimore, between the fifteenth day of April and the fifteenth day of September, without first obtaining permission so to do from the Commissioner of Health; provided nothing in this section shall be so construed as to prevent any oyster-packing establishment or oyster dealers from depositing oyster shells at the place where such establishments or dealers may be actually engaged in business. Any person or persons or body corporate found violating this section shall, upon conviction thereof, pay a fine of Ten Dollars for each and every day he or they may so violate the provisions hereof, said fines to be recovered as other fines are recoverable.

City Code (1927), art. 16, sec. 182. 1879, art. 23, sec. 41. 1893, art. 23, sec. 58.

144. Any person who may have deposited or who may deposit oyster or clam shells in any public square, place, street, lane, alley or elsewhere, within the limits of the City of Baltimore, or cause the same to be done, and shall fail to remove them when directed by the Commissioner of Health shall forfeit and pay the sum of Twenty Dollars for each and every day the same shall remain in such place, after having received ten days' notice; and the amount so forfeited shall be collected as all other fines are.

City Code (1927), art. 16, sec. 83. 1879, art. 23, sec. 42. 1893, art. 23, sec. 59.

145. It shall not be lawful for any person or persons to hawk or peddle oysters through any of the streets, lanes or alleys of the City of Baltimore, from the first day of June to the fifteenth day of September, in each and every year, and for any violation of the provisions of this section, the person or persons so offending shall forfeit and pay a penalty of Twenty Dollars, to be recovered as other fines and forfeitures are recoverable.

City Code (1927), art. 16, sec. 184. 1893, art. 23, sec. 60. Ord. 117, October 31, 1881.

146. It shall not be lawful for any person or persons, or body corporate, to place or store any oyster shells within the corporate limits of the City of Baltimore; provided nothing in this section shall be so construed as to prevent any oyster packing establishment or oyster dealers from depositng oyster shells at the place where such establishment or dealers may be actually engaged in business.

City Code (1927), art. 16, sec. 185. 1893, art. 23, sec. 61. Ord. 117, October 31, 1881.

147. It shall not be lawful for oyster packing establishments or oyster dealers to store on their premises oyster shells during the months of June, July and August. Any person or persons, or body corporate, found violating this section shall, upon conviction thereof, pay a fine of Ten Dollars ($10) for each and every day he or they may so violate the provisions hereof; said fines to be recovered as other fines are recovered.

Drainage

City Code (1927), art. 16, sec. 275. 1893, art. 23, sec. 105. Ord. 94, June 17, 1886.

148. It shall be the duty of every builder, owner or other person having charge of any building or buildings in the city, to provide for proper drainage from said building or buildings. Every owner, builder or other person having charge of any building or buildings, who shall refuse or neglect to comply with this section shall be liable to a penalty of Ten Dollars for every such offense.

Garbage, Etc.

City Code (1927), art. 16, sec. 186. 1893, art. 23, sec. 62. Ord. 38, April 5, 1881.

149. It shall be unlawful for any person or persons to dump any earth, dirt, sand, ashes, garbage, gravel, rocks, refuse or other matter, upon any private property in the City of Baltimore, without permission therefor from the owner or owners thereof, or their agent.

City Code (1927), art. 16, sec. 187. 1893, art. 23, sec. 63. Ord. 38, April 5, 1881.

150. Any person or persons who shall violate the provisions of the preceding section, or authorize any violation thereof by his or

their employees or agents, shall be subject to a fine of Five Dollars for each and every such offense; to be collected as other fines are collected for violations of city ordinances.

City Code (1927), art. 16, sec. 188. Ord. 54 (1895-96).

151. It shall be unlawful to burn any garbage or refuse matter of any kind on or in the vicinity of any of the ash or garbage dumps in the City of Baltimore, under the penalty of Five Dollars ($5) for each and every violation thereof.

Graves

City Code (1927), art. 16, sec. 192. Ord. 72 (1894-95).

152. All graves which may hereafter be dug in any cemetery or burial ground within the City of Baltimore shall be of the depth of at least four feet six inches; and any person or persons employed for such purpose who shall refuse or neglect to dig any such grave of the said depth shall forfeit and pay for each and every offense the sum of Twenty Dollars ($20); said sum to be recovered as other fines and forfeitures are recoverable.

Expectorating

City Code (1927), art. 16, sec. 193. Ord. 16 (1897-98).
Ord. 201 (1904-05), sec. 1.

153. It shall not be lawful for any person to expectorate or spit in or upon any paved sidewalk or footpath of any public street, avenue or public square in the City of Baltimore, or in or upon any part of any public building under the control of the Mayor and City Council of Baltimore City, or upon the floor, platform or steps of any street railway car or other public vehicle carrying passengers for hire, or upon the floor of any depot or station, or upon the station platform or stairs of any elevated railroad or other common carrier, or upon the floor or steps of any theatre, store, factory or any building which is used in common by the public, or upon the floor of any hall or office in any hotel or lodging house which is used in common by the guests thereof.

City Code (1927), art. 16, sec. 194. Ord. 201 (1904-05), sec. 2.
Ord. 562 (1946-47).

154. The corporations or persons owning or having the management or control of any such street railway cars, or public vehicles carrying passengers for hire, theatres, stores, factories or buildings which are used by the public in common, depots, stations, station platforms or stairs of any elevated railroad or other common carrier, hotel, or lodging house, shall keep permanently and conspicuously posted in each of said places a sufficient number of notices forbidding spitting upon the floors, and calling attention to the provisions of this section.

City Code (1927), art. 16, sec. 195. Ord. 201 (1904-05), sec. 3.

155. Any person violating any of the provisions of Sections 153 and 154 shall, on conviction thereof, be fined in any sum not

less than One Dollar and not more than Five Dollars for the first offense, and in any sum not less than Five Dollars and not more than Ten Dollars for each and every subsequent violation of said sections; said fines to be recovered as are other fines for the violation of city ordinances.

Ice Ponds

City Code (1927), art. 16, sec. 196. 1893, art. 23, sec. 64. Ord. 1, November 13, 1878.

156. It shall not be lawful for any person or persons, or body corporate to use any grounds within the limits of the City of Baltimore for the purpose of an ice pond without having first obtained written permission from the Health Commissioner to construct the same.

City Code (1927), art 16, sec. 197. 1893, art. 23, sec. 65. Ord. 1, November 13, 1878.

157. It shall not be lawful to permit any person or persons, or body corporate, to use any grounds within the limits of the City of Baltimore for an ice pond, except from the first day of November to the first day of March, at the expiration of which time the owner or owners of said pond or ponds will be required to thoroughly drain the water from the same.

City Code (1927), art. 16, sec. 198. 1893, art. 23, sec. 66. Ord. 1, November 13, 1878.

158. Any person or persons, or body corporate, refusing or neglecting to thoroughly drain the water from the pond or ponds used by them, on the first day of March, without previous notice, shall be subject to a fine of Fifty Dollars, to be collected as other fines are collected; and the Commissioner of Health is hereby instructed to have properly enforced the provisions of this subdivision.

Smoke

City Code (1927), art. 16, sec. 199. Ord. 1296 (1930-31), sec. 199. Ord. 696 (1937-38), sec. 199. Ord. 292 (1945-46), sec. 199.

159. Smoke Abatement Engineer. There shall be a Division of Smoke Control in the Bureau of Mechanical-Electrical Service and the Mechanical-Electrical Engineer shall appoint a Smoke Abatement Engineer, who shall be an engineer, qualified by technical training and experience in the theory and practice of construction and operation of furnaces and combustion devices and in the theory and practice of smoke abatement, and who shall be further qualified by broad experience for conferring with, soliciting the co-operation of, and stimulating the efforts of, all sections of the community of Baltimore in the reduction of smoke. The Mechanical-Electrical Engineer may appoint an Assistant Smoke Abatement Engineer and such inspectors, clerks and other assistants as the Board of Estimates may approve, who shall receive such compensation as may be fixed in the Ordinance of Estimates,

and said Smoke Abatement Engineer and his assistants shall perform such duties consistent with the provisions of this sub-title as may be prescribed by the said Mechanical-Electrical Engineer but subject to all the general provisions of Section 73 of the City Charter (1949 Edition). The duties of the Smoke Abatement Engineer shall include the preparation and execution of educational and co-operative plans and undertakings for securing the compliance of the public of Baltimore in the reduction of the emission of smoke; the performance of such examinations, inspections, and issuance of permits, as are instituted by the Advisory and Appeal Board, to insure that new or remodeled fuel and/or material burning installations are suited for the prevention of the emission of smoke to the prescribed degree; and the inauguration of prosecutions for non-compliance with the provisions of this sub-title. All appointments made under the provisions of this section shall be subject to all the laws, rules and regulations governing the classified city service. Provided, however, that any person now holding a position in the Bureau of Smoke Control may be transferred to the Division of Smoke Control.

The Smoke Abatement Engineer shall make an annual report of the work of his office to the Mechanical-Electrical Engineer.

Ord. 292 (1945-46), sec. 200.

160. (a) Advisory and Appeal Board. The Mayor shall appoint an Advisory and Appeal Board consisting of five (5) persons qualified as hereinafter provided. The members of this Board shall be appointed for a term of five years, except that for the initially appointed Board, one (1) member shall be appointed for one (1) year, one (1) member for two (2) years, one (1) member for three (3) years, one (1) member for four (4) years, and one (1) member for five (5) years. The members of this Board shall receive no compensation for their services. Appointees shall be of high standing for their knowledge and interest in the development and betterment of the City of Baltimore, and shall be persons whose capacity for associated service in municipal work is generally recognized, and who are not interested in the manufacture or sale of any combustion or smoke-abatement device. Two members shall be chosen who shall represent business and administrative experience in the ownership or direction of industrial and transportation enterprises requiring the combustion of fuel and/or material; two members shall be chosen who shall have had broad engineering experience in the design and operation of fuel and/or material burning installations; and one shall be chosen who shall preferably have no connection with the ownership or design of fuel burning plants but who in his professional attainments and/or experience shall have exhibited intellectual competence and judicial capacity. Vacancies from expiration of term or from other causes shall be filled by the Mayor according to the method of selection applying to the member retiring.

(b) The office of the Smoke Abatement Engineer shall supply the clerical assistance for recording the minutes of public hearings

of the Board, for executing other secretarial duties that may be requested by the Board, and any engineering assistance for investigation or consultation needed by the Board. The Board shall be self-determinative in the adoption of by-laws, the election of officers, and the conduct of its deliberations.

(c) The Advisory and Appeal Board shall be an agency for adjudicating the various technical and economic problems that occur in the formulation of the type and kind of supervisory control to be exercised by the Smoke Abatement Engineer over new and remodeled installations of combustion equipment in so far as the emission of smoke to the atmosphere is concerned. The Board shall determine after investigation and consultation the methods of examination and inspection, and the factors to be considered, to insure that new or remodeled fuel and/or material burning installations will be suited for the prevention of the emission of smoke to the degree prescribed in the ordinance, but the Board shall have no authority to inquire regarding the manufacturing processes of metallurgical, chemical, oil refining processes, ceramic, or other commodity manufacturing industries involving the combustion of fuel and/or material, beyond the requiring of evidence that the installation will be suited in the prevention of the emission of smoke to the degree prescribed in this sub-title.

Ord. 292 (1945-46), sec. 201.

161. Emission of Dense Smoke. The emission of dense smoke, within the city from the smoke stack of any boat, tug, roller, derrick, pile driver, tar kettle or other similar machine or contrivance, or from any open fire, or from the smoke stack or chimney of any building, roundhouse or premises, except for a period of or periods aggregating nine minutes or less in any one hour of a density of No. 2 smoke as defined by the Ringelmann Chart, or six minutes or less of a density in excess of No. 2 smoke as defined by the Ringelmann Chart in any one hour at a time when the firebox is being cleaned out or a new fire being built therein, or from the stack of any locomotive, tug or boat for a period in excess of one continuous minute in any one hour after said locomotive, tug or boat is in or ready for service, is prohibited and is hereby declared to be a nuisance and may be summarily abated by the Smoke Abatement Engineer or by anyone whom he may duly authorize for such purpose. Such abatement may be in addition to the fine hereinafter provided. For the purpose of grading the density of smoke, the Ringelmann Chart, as now published and used by the United States Bureau of Mines, which is hereby made a part of this sub-title by reference, shall be the standard. Smoke shall be considered dense when it is equal to or of greater density than No. 2 of said chart. Any person or persons, firm or corporation violating the provisions of this section shall, upon conviction, be fined as hereinafter provided; and each violation of this section shall constitute a separate offense for each and every day on which such violation shall continue. All persons participating in any such violation, either as owners, proprietors, lessees, agents, tenants,

managers, superintendents, captains, engineers, firemen or janitors, or otherwise, shall severally be liable therefor and subject to the penalties fixed by this sub-title.

Ord. 292 (1945-46), sec. 202.

162. Emission of Dust or Fly Ash. No person or persons, firm or corporation shall cause the emission or discharge into the atmosphere of ashes, cinders, dust, soot and fly ash from chimneys, flues and smoke stacks where the quantity of solids emitted exceeds 0.75 grains per cubic foot of flue gas at a stack temperature of 500 degrees Fahrenheit, of which amount not to exceed 0.2 of a grain per cubic foot shall be of such size as to be retained on a 325 mesh U. S. Standard sieve. These conditions are to be conformed to when the percentage of excess air in the stack does not exceed 50 per cent. at full load. The foregoing requirements shall be measured by the methods outlined in the Tentative Test Code for dust separating apparatus of the American Society of Mechanical Engineers which is hereby made a part of this sub-title by reference, a copy of which is and shall remain on file in the office of the Smoke Abatement Engineer. Any person or persons, firm or corporation violating the provisions of this section shall, upon conviction, be fined as hereinafter provided; and each violation of this section shall constitute a separate offense for each and every day on which such violation shall continue. All persons participating in any such violation, either as owners, proprietors, lessees, agents, tenants, managers, superintendents, captains, engineers, firemen or janitors, or otherwise, shall severally be liable therefor and subject to the penalties fixed by this sub-title.

Ord. 292 (1945-46), sec. 203.

163. Importation, Sale, Use or Consumption of Certain Coals Prohibited. It shall be unlawful to import, sell, offer for sale, expose for sale or exchange for use and consumption in the City of Baltimore, or to use or consume in the City of Baltimore any solid fuel for hand-firing or surface burning types of equipment which does not meet the standard of a smokeless solid fuel as set forth in this section. Smokeless solid fuel for the purpose of the enforcement of this sub-title shall be considered a fuel the volatile content of which is 23 per cent or less on a dry basis. Provided, however, that if a fuel contains volatile matter in excess of 23 per cent. on a dry basis, it shall be acceptable under the terms of this sub-title provided that it meets the same standards in regard to smoke production as that of a fuel containing less than 23 per cent. volatile matter on a dry basis; provided, that this section shall not apply to homes of three families or less.

Ord. 292 (1945-46), sec. 204.

164. Railroads. All persons or corporations owning, operating, or controlling steam railroads or locomotives shall use a smokeless solid fuel, or oil, or Diesel, or electric engines or locomotives equipped with mechanical fuel burning device as defined in this

sub-title or equipped with over-fire jets in operating their locomotives within the corporate limits of the City of Baltimore. The foregoing provision shall apply to all locomotives either in service or being prepared for service in transfer, yard or switching operations, but shall not apply to road engines which are serviced in roundhouses so equipped as to enable them to comply with the other provisions of this sub-title regarding the emission of dense smoke while in operation within the corporate limits of the City of Baltimore.

Ord. 292 (1945-46), sec. 205.

165. Construction, Reconstruction and Remodeling Plans and Specifications, Permits. No new fuel-burning plants nor reconstruction, nor remodeling of any existing fuel-burning plants for producing power and heat, or either of them, nor refuse-burning equipment, nor any chimney or furnace connected with such fuel or refuse-burning equipment, shall be installed, erected, reconstructed or remodeled in the City of Baltimore until plans and specifications of the same have been filed by the owner, contractor, installer or other person in the office of and approved by the Smoke Abatement Engineer as being so designed that same can be managed and operated to conform to the provisions of this sub-title and prevent air pollution, and a permit issued by him for such installation, erection, reconstruction or remodeling. Plans and specifications so filed with the Division of Smoke Control shall show the type of installation, the amount of work and the amount of heating to be done by such fuel or refuse-burning plant and all appurtenances thereto, including all provisions made for the purpose of securing complete combustion of the fuel or refuse to be used and the manner in which it is to be burned for the purpose of preventing air pollution. Said plans and specifications shall also contain a statement of the rate of burning and kind of fuel or refuse proposed to be used and the manner in which it is to be burned; and said plans and specifications shall also show that the room or premises in which fuel or refuse-burning plants shall be located is provided with doors, windows, air-shafts, fans or other means of ventilation sufficient to prevent the temperature of such room, basement or other portion of building wherein such fuel or refuse-burning apparatus is to be used, from rising to a point higher than 120 degrees Fahrenheit; and sufficient also to provide that the atmosphere of any such room, basement or other portion of the building wherein such fuel or refuse-burning apparatus may be located may be changed at least every ten minutes. Such plans shall further show the dimensions of such room in which such fuel or refuse-burning apparatus is to be located, the location and dimensions of all chimneys and smoke stack used in connection with or as a part of said fuel or refuse-burning plant. Upon the inspection and approval of said plans and specifications by the Smoke Abatement Engineer and upon the payment of the fees hereinafter provided, and if such plans and specifications shall show that adequate and approved provisions for the purpose of

securing complete combustion of the fuel or refuse to be used and for the purpose of preventing and eliminating smoke, soot, fly ash, dust or noxious acids have been made, a permit for the installation or for the construction, erection, reconstruction or remodeling of such fuel or refuse-burning plant shall be issued. As soon as the Smoke Abatement Engineer has issued the permit as above provided, it shall be the duty of the various departments having charge of the inspection of the premises wherein said fuel or refuse-burning apparatus is located to cooperate with the said Smoke Abatement Engineer to see that the execution of the work so authorized by said permit shall be done in conformity with the plans and specifications submitted and approved, and with the standards, rules and regulations fixed by the Division of Smoke Control. Any person, firm or corporation who shall violate any of the provisions of this section shall be subject to the penalties hereinafter provided. If such plans and specifications as described above are not submitted to the Division of Smoke Control for approval previous to the installation of any new fuel-burning plant, or the reconstruction or remodeling of any existing fuel-burning plant, for producing power, heat, or either of them, or refuse-burning plant, or any chimney connected with such fuel or refuse-burning plant, the Smoke Abatement Engineer shall be authorized to seal immediately such equipment until the owner, contractor, installer or other person has complied with the provisions of this section.

Ord. 292 (1945-46), sec. 206.

166. Use of Plant-Certificate Required. It shall be unlawful for any person to use any new, reconstructed or remodeled plant, or any plant duly sealed under the provisions of this sub-title, for the production and generation of heat and power, or either of them, or for the burning of refuse, until he shall have first procured a certificate from the Smoke Abatement Engineer certifying that the plant is so constructed that it will do the work required with the type of fuel and equipment used; and that, in the opinion of the Smoke Abatement Engineer; it can consistently be so managed in burning the type of fuel in the manner specified in the permit, no dense smoke shall be emitted from the chimney connected with the furnace or firebox in violation of the provisions of this sub-title; and a notice of the size, type, kind and manner of burning the fuel as specified in the permit has been prominently displayed and permanently attached to said plant. Any person or persons violating the provisions of this section shall be subject to the penalties prescribed in this sub-title. The issuance and delivery by the Smoke Abatement Engineer of any permit or certificate for the construction, reconstruction or remodeling of any plant or chimney connected with a plant shall not be held to exempt any person, firm or corporation to whom any such permit or certificate has been issued and delivered, or who is in possession of any such permit or certificate, from prosecution on account of the emission of dense smoke, fly ash, soot, cinders, dust or noxious acids caused or permitted by any such person, firm or corporation.

Ord. 292 (1945-46), sec. 206A.

167. Permit for Erection of Building Prohibited, When. The Building Inspection Engineer shall not issue a permit for the erection, construction, reconstruction or alteration of any building or structure wherein the plans for such building or structure show any chimney or smoke stack in connection with such building or structure, until such plans have been submitted to the Smoke Abatement Engineer and the dimensions of such chimney or chimneys approved by him as having sufficient capacity and suitable for the type of equipment and fuel to be used. The Smoke Abatement Engineer shall not approve plans or issue permits for the installation of any fuel-burning device of the surface burning type unless the fuel to be used in such device will be a smokeless solid fuel as defined in Section 163 of this sub-title, or a mechanical fuel-burning device is used. The term surface burning type, as used in this sub-title, is meant to include any fuel-burning device in which the fresh fuel can be thrown directly on the hot fuel bed. A mechanical fuel-burning device is defined as any device by means of which fresh fuel is mechanically fired from outside the furnace into the zone of combustion, the same being actuated by automatic controls.

Ord. 292 (1945-46), sec. 206B.

168. Fees. Fees for permits under this ordinance shall be as follows:

Warm Air Furnaces, Water Heaters and Incinerators	$2.00
Boilers:	
Less than 50 H. P.	2.00
50 to 250 H. P., inclusive	4.00
251 to 500 H. P., inclusive	6.00
501 to 1,000 H. P., inclusive	12.00
Over 1,000 H. P.	20.00
Steam Jets, Periscopes, Oil Burners, Mechancial Stokers, and other aid to combustion in existing plants	2.00
Furnaces (Other than boiler furnaces):	
Less than 11 sq. ft. grate surface, or hourly fuel consumption less than 275 lbs. coal, or 22 gals. oil	2.00
11 to 55 sq. ft. grate surface or 275 to 1,375 lbs./hr. coal consumption, or 22 to 110 gals./hr. oil consumption	4.00
56 to 110 sq. ft. grate surface or 1,376 to 2,750 lbs./hr. coal consumption or 111 to 220 gals./hr. oil consumption	6.00
111 to 220 sq. ft. grate surface or 2,751 to 5,500 lbs./hr. coal consumption or 221 to 440 gals./hr. oil consumption	12.00
Over 220 sq. ft. grate surface or 5,500 lbs./hr. coal consumption, or 440 gals./hr. oil consumption	20.00
Heating boilers having net rating of less than 660 sq. ft. of steam radiation or less than 990 sq. ft. of water radiation	2.00
Water Heaters rated at less than 350 gals. water per hour	2.00
Warm Air Furnaces having grate less than 30-inch diameter	2.00

FEES FOR CERTIFICATES

Warm Air Furnaces, Water Heaters and Incinerators	3.00
Boilers:	
Less than 50 H. P.	3.00
50 to 250 H. P., inclusive	6.00
251 to 500 H. P., inclusive	9.00
501 to 1,000 H. P., inclusive	18.00
Over 1,000 H. P.	30.00
Steam Jets, Periscopes, Oil Burners, Mechanical Stokers and other aids to combustion in existing plants	3.00
Furnaces (Other than boiler furnaces):	
Less than 11 sq. ft. grate surface, or hourly fuel consumption less than 275 lbs. coal, or 22 gals. oil	3.00
11 to 55 sq. ft. grate surface or 275 to 1,375 lbs./hr. coal consumption, or 22 to 110 gals./hr. oil consumption	6.00
56 to 110 sq. ft. grate surface or 1,376 to 2,750 lbs./hr. coal consumption, or 111 to 220 gals./hr. oil consumption	9.00
111 to 220 sq. ft. grate surface or 2,751 to 5,500 lbs./hr. coal consumption, or 221 to 440 gals./hr. oil consumption	16.00
Over 220 sq. ft. grate surface or 5,500 lbs./hr. coal consumption, or 440 gals./hr. oil consumption	30.00
Heating boilers having a net rating of less than 660 sq. ft. of steam radiation, or less than 990 sq. ft. of water radiation, fee	3.00
Water heaters rates at less than 350 gals. water per hour, fee	3.00
Warm Air Furnaces having grate less than 30-inch. diameter, fee	3.00
Fees for permits and/or certificates are not imposed for single family dwellings or apartments for three families or less.	

In the event the installation of the device is not completed or that the Building Inspection Engineer refuses issuance of a permit for the erection or construction of any building or structure, the fee which has been paid for the certificate of operation may be refunded upon proper presentation of the facts. No refunds shall be made after a period of thirty days from the issuance of the permit. The aforesaid fees shall be paid to the City of Baltimore prior to the approval of plans for such installation by the Smoke Abatement Engineer. The fee for the examination or inspection shall include the issuing of a certificate for operation in case such certificate for operation is granted and shall be paid at the time the permit is secured.

Ord. 292 (1945-46), sec. 206C.

169. Appeals to be Taken, How. Any person aggrieved by any decision, ruling or order of the Smoke Abatement Engineer may

take an appeal to the Advisory and Appeal Board as established by Section 160. Such appeal shall be taken within ten days after the decision, ruling or order complained of by filing with the Smoke Abatement Engineer a notice of appeal directed to the Advisory and Appeal Board, specifying the grounds thereof and the relief prayed for. The Smoke Abatement Engineer shall forthwith transmit to the Advisory and Appeal Board all papers constituting the record upon which the decision, ruling or order appealed from is taken. The Board shall fix a reasonable time for the hearing of the appeal and give due notice thereof by mail to the parties in interest and decide the same within a reasonable time. Such appeal shall act as a stay of any decision, ruling or order until either approved, modified or set aside by said Advisory and Appeal Board. At the hearing any party may appear in person or by agent or by attorney. The Board, upon hearing such appeal, shall either affirm, modify or set aside any such decision, ruling or order. Any person aggrieved by any decision of such Board shall have the right of appeal to the Baltimore City Court.

Ord. 292 (1945-46), sec. 206D.

170. Boilers or Other Heating Apparatus to be Sealed, When. After any owner, agent, occupant, manager or lessee of any premises who has been previously notified of three or more violations of this sub-title within any consecutive 12-month period, either before or after its amendment, in respect to the emission of dense smoke, soot, cinders, fly ash, dust or noxious acids, the owner or agent of said premises shall be notified to show cause before the Smoke Abatement Engineer on a day certain, not less than ten days from the date of notice, why the equipment causing such violations should not be sealed. The notice herein provided for may be given by mail directed to the last known address of the party to be notified, or if said party or his whereabouts is unknown, then by posting a notice on or near the premises at which the violations shall have occurred. Upon said date said owner or agent may appear and be heard. Upon such hearing, if the Smoke Abatement Engineer finds that adequate corrective means and methods have not been employed to correct the cause of such condition, then it shall be his duty to seal said equipment until such time as a permit and certificate as herein provided have been applied for and issued for said plant. The owner or agent may, within ten days of said decision, appeal said finding to the Advisory and Appeal Board, and said appeal shall stay the sealing pending said appeal. It shall be unlawful for any person to break a seal of any boiler or heating apparatus that has been duly sealed by the Smoke Abatement Engineer unless authorized by the Smoke Abatement Engineer in writing.

Ord. 292 (1945-46), sec. 206E.

171. Interference With Smoke Abatement Engineer. If any person or persons shall refuse to comply with or assist in the violation of any of the provisions of this sub-title, or who, in any manner, hinders, obstructs, delays, resists, prevents, or in any way interferes

with, the Smoke Abatement Engineer or Smoke Inspectors, or police officers in the performance of any duty herein enjoined, or shall refuse to permit such inspectors or officers to perform their duty by refusing them, or either of them, entrance to any premises at reasonable hours in which the provisions of this sub-title are being violated or refuse to permit the inspection or examination of such building, establishment, premises or enclosures for the purpose of the enforcement of this sub-title, he shall be guilty of a misdemeanor and fined as herein provided.

Ord. 292 (1945-46), sec. 206F.

172. Penalty. Any person who shall violate any of the provisions of this sub-title shall be fined not less than Twenty-five Dollars nor more than One Hundred Dollars for each offense, and each day of such violation shall constitute a separate offense.

Ord. 292 (1945-46), sec. 206G.

173. Defense and Exemptions to Charges of Violation. In any proceeding under this sub-title, it shall be a good defense, if the person, firm or corporation charged with the unlawful emission of smoke, fly ash, soot, cinders, dust or noxious acids shall show to the satisfaction of the court or jury trying the same that an adequate supply of smokeless solid fuel is not available, and that there is no known practicable device, appliance, means or method by application of which to his building, establishment, premises, locomotive or equipment the emission or discharge of the dense smoke, fly ash, soot, cinders, dust or noxious acids complained of in such proceeding could have been prevented. In the general performance of their duties, or for the purpose of obtaining the facts with respect to any such defense, the Smoke Abatement Engineer and the Smoke Inspectors are hereby authorized to enter at all reasonable hours upon and into any buildings, establishments, premises and enclosures in or from which they have reason to believe that the provisions of this sub-title are being violated, and to inspect or examine such buildings, establishments, premises or enclosures; and the Smoke Abatement Engineer and the Smoke Inspectors shall collect and preserve evidence of all facts as to any violations of this sub-title. Upon written complaint to the Smoke Abatement Engineer by the owner or operator of any fuel-burning plant described in this sub-title against any decision or ruling or order of the Smoke Abatement Engineer, setting forth that it is impossible in the operation of said apparatus either by alteration, repair or addition thereto, to operate the same in complete compliance with the requirements of this sub-title and upon filing said complaint with such Smoke Abatement Engineer the Engineer shall thereupon and in any event not later than ten days from the receipt of such written complaint cause the same to be filed with the Advisory and Appeal Board, which shall thereafter set a time and hearing for such complaint and give notice thereof by mail to the parties interested, and after such hearing the Advisory and Appeal Board may vary or modify the application of any of the regulations or provisions of this sub-title, relating to said fuel-burning plant so that the spirit of this sub-title shall be ob-

served, the public health, welfare and safety secured and substantial justice done. In exercising the above-mentioned powers the Advisory and Appeal Board may, in conformity with the provisions of this sub-title, reverse or affirm wholly or in part, or may modify the order, requirements, decision or determination appealed from, and may make such order, requirements, decision, or determination as ought to be made, and to that end shall have all the powers of the Smoke Abatement Engineer.

Ord. 292 (1945-46), sec. 206H.

174. Interpretation. Nothing in this sub-title shall be so construed as to abate the prosecution for any offense heretofore committed in violation of any ordinances of the City of Baltimore or to relieve any person of any obligation or of any penalty heretofore incurred because of the violation of any ordinances of the City of Baltimore. All ordinances or parts of ordinances inconsistent with the provisions of this sub-title are hereby repealed. If any part of this sub-title shall be declared to be invalid, such invalidity shall not affect the remaining portions of this sub-title, the Mayor and City Council hereby declaring that they would have passed the remaining portions of this sub-title notwithstanding such invalidity.

Vacant Lots

Ord. 1274 (1930-31), sec. 217A.

175. Any person throwing or depositing any dirt, trash, household wastes, refuse, debris or any other matter on any vacant lot or tract of land without written permission from the owner of such land shall, upon conviction, be subject to a fine of not less than $5.00 and not more than $100.00; and in addition to this the convicted person shall be liable to a fine of $10.00 for each day such trash, household wastes, refuse, debris or other matter remains on such vacant land, providing however, that the penalties herein provided shall not apply to persons employed by and acting under instructions from firms or corporations, but in all such cases the said penalties shall apply to the firm or corporation under whose instructions such employee acted.

Ord. 1274 (1930-31). Ord. 617 (1948-49), sec. 217B.

176. It shall be unlawful for any owner, occupant or person in control of any lot or lands within the City of Baltimore to allow or maintain on any such lot or lands any growth of weeds or other rank vegetation to a height over one foot; and every owner, occupant or person in control of any lot or lands within the City of Baltimore shall cause said lot or lands to be kept free from ragweeds, wild mustard, wild lettuce, wild parsley, common thistle, milkweed, poison ivy, and all other noxious weeds by destroying such noxious weeds by spraying with a chemical compound, by cutting and removal or by digging under, or by any other method approved by the Commissioner of Health.

Any owner, occupant or person in control of any lot or lands within the City of Baltimore who shall fail to comply with any

of the provisions of Sections 176-179 shall upon conviction thereof be fined in any sum not exceeding $50.00.

Ord. 617 (1948-49), sec. 217C.

177. Notwithstanding the penalty contained in Section 176, and in addition thereto, when the Commissioner of Health ascertains that noxious weeds as set forth in the next preceding section are growing on lands within the City of Baltimore, he shall cause written notice to be served upon the owner, lessee, agent or tenant having charge of any lot or lands within the City of Baltimore, that noxious weeds are growing on such lands and that they must be destroyed by any of the methods set forth in the next preceding section, and that such destruction must be commenced within five (5) days after the service of such notice. If any such order of the Commissioner of Health, issued under the authority of the provisions of this section, is not complied with within ten days after the service thereof, then the Commissioner of Health may notify the Director of the Department of Public Works, who shall cause said noxious weeds to be destroyed and the expense incurred incident to said order shall be paid by the owner of said lot or lands, and until so paid shall be a lien upon the realty and recoverable as other liens on realty in Baltimore City.

Ord. 617 (1948-49), sec. 217D.

178. Service of the notice provided in the next preceding section to any person or persons within the City of Baltimore may be made by registered mail or by any employee of the Health Department or any police officer. If the owner or other person having charge of such lands is a non-resident whose address is known such notice shall be sent to his address by registered mail. If the address of any owner, or person having charge of such lot or lands cannot be located after diligent search it shall be sufficient to post such notice on the lot or lands.

Ord. 617 (1948-49), sec. 217E.

179. The Commissioner of Health is hereby authorized and empowered to make and adopt such rules and regulations as he may deem proper and necessary for the enforcement of this subtitle for the better protection of the health of the city.

PARROTS

Ord. 796 (1938-39), sec. 1.

180. No person shall bring into the City of Baltimore or offer for sale, sell, give away, or breed within the limits of said City parrots, parrakeets, love birds, macaws, cockatoos, lories, lorikeets and other birds of the psittacine family. Provided, however, that zoological gardens operated under public authority or laboratories, in which scientific research is being carried out, may receive or import birds of the psittacine family in conformity with such rules and regulations as shall be prescribed by the Commissioner of Health of the City of Baltimore.

Ord. 796 (1938-39), sec. 2.

181. All birds having psittacosis, or which are suspected of being carriers of psittacosis virus, and all birds of the psittacine family exposed to a bird having psittacosis or found or harbored on the same premises, where infection with psittacosis virus is discovered, or suspected, shall be immediately destroyed.

Ord. 796 (1938-39), sec. 3.

182. This sub-title, insofar as it prohibits the selling or giving away of birds of the psittacine family, shall not apply to such birds in the possession of dealers thereof at the time this sub-title takes effect.

Ord. 796 (1938-39), sec. 4.

183. The Commissioner of Health of Baltimore City is hereby authorized and empowered to make and adopt such rules and regulations as he may deem proper and necessary for the enforcement of this sub-title for the better protection of the health of the City.

Ord. 796 (1938-39), sec. 5.

184. Any person violating any of the provisions of this sub-title, or any order or regulation made and adopted by the Commissioner of Health of Baltimore City in pursuance hereof, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding Fifty Dollars ($50) for each offense.

PRIVIES

City Code (1927), art. 16, sec. 241. 1879, art. 23, sec. 75. 1893, art. 23, sec. 95.

185. No person shall remove the contents of any privy, well or sink, within the limits of the city, without having first obtained a license from the City Collector so to do; and every person offending against the provisions of this section shall for every such offense forfeit and pay the sum of Twenty-five Dollars, and also be liable to the penalty for creating or maintaining a nuisance. Every person who may obtain a license to empty or remove the contents of privies or vaults shall be considered as subject to the orders of the Commissioner of Health in all matters relating to the opening and cleaning of privies or vaults, time and manner of removal, and the presentation of statistics connected with the cleaning of privies, as also the place or places to which night soil may be removed; and for any refusal or neglect to obey the orders of the Commissioner of Health, as herein provided, it shall be the duty of the City Treasurer, upon the written request of the Commissioner of Health, to revoke the license of the person or persons so refusing or neglecting to obey.

Boehm v. Balto., 61 Md. 259.

City Code (1927), art. 16, sec. 245. 1879, art. 23, sec. 76. 1893, art. 23, sec. 96.

186. Every person desirous of being licensed to empty or remove the contents of privy wells and sinks, shall make application

in writing to the City Treasurer, who, after conference with the Commissioner of Health, on being satisfied with the character of the applicant, and the security and tightness of his cart or carts, and that he is the owner of such horses and cart or carts, as represented in his application, and that he is not in collusion or combination with others to defraud the corporation, may grant him a license for one year, and renew the same from time to time; and for such license so granted and for each renewal of the same, he shall pay therefor to the Treasurer the sum of Two and a half Dollars for each and every cart; and every person so licensed shall give bond to the city, with the security to be approved by the Treasurer, in the penal sum of Five Hundred Dollars, conditioned for he faithful performance of all the duties enjoined by this subtitle, and the Treasurer, upon complaint of the Health Commissioner, may revoke or suspend any such license.

City Code (1927), art. 16, sec. 246. 1879, art. 23, sec. 77. 1893, art. 23, sec. 97.

187. The Commissioner of Health is hereby authorized and empowered, in his discretion, to permit any person or persons who shall at his or their own cost, be supplied with suitable conveniences, to clean sinks, and privy vaults in the City of Baltimore during the day time; provided, that no annoyance to sight or smell shall arise therefrom.

City Code (1927), art. 16, sec. 247. 1879, art. 23, sec. 78. 1893, art. 23, sec. 98.

188. The said Commissioner of Health shall, before giving a permit to any person or persons for the cleaning of vaults or privies as provided for in Section 187, demand and receive from such person or persons a good and sufficient bond for the proper performance of the work to be done without annoyance to sight or smell to the citizens of Baltimore.

City Code (1927), art. 16, sec. 249. Ord. 69 (1901-02).

189. It shall be unlawful for any person or persons whomsoever to throw or place, or cause or permit to be thrown or placed, in any privy well or water closet, in the City of Baltimore, any matter whatsoever, such as garbage, ashes, glass, leather, wood or other substances, other than excrement, or other matter for the reception of which privy wells and water closets are usually used, and any person or persons violating the provisions of this section shall be liable to a penalty of Five Dollars ($5), for each and every offense.

City Code (1927), art. 16, sec. 250. 1893, art. 23, sec. 100. Ord. 94, June 17, 1886. Ord. 110 (1900-01). Ord. 83 (1905-06).

190. When, in the opinion of the Commissioner of Health, any privy, cess-pool or vault becomes offensive, the owner thereof (whether he shall be the occupant of the premises containing such privy, cess-pool or vault, or not), or the tenant or occupant of

such premises, or the agent having charge of management of such premises, shall cause such privy, cess-pool or vault to be cleansed within such reasonable time after notice given to that effect by the Commissioner of Health, as may be expressed in such notice, and in case of neglect or refusal so to do, the said owner (whether he shall occupy such premises or not), or the said tenant or occupant, or the said agent or person having charge or management of such premises, or any one, or more of them to whom such notice shall have been given, and who shall have neglected to obey the same, or to cause said premises to be cleansed, shall be liable to a penalty of not more than Twenty Dollars ($20.00) for every such neglect or refusal and shall also be liable for the expense incurred, in case said work shall be done under the orders of the Commissioner of Health; said fine to be collected as other fines are collectible.

City Code (1927), art. 16, sec. 251. 1893, art. 23, sec. 101. Ord. 94, June 17, 1886.

191. No privy, cess-pool or vault shall be emptied without a permit from the Commissioner of Health, nor in any other mode or at any other time than said Commissioner may direct; and no privy, cesspool or vault shall be opened or cleansed between the first day of June and the first day of October, unless said Commissioner is satisfied of the necessity of such opening or cleaning for the health and comfort of the neighborhood; and in case of such opening, cleaning or removal of the contents of privy, cesspool or vault, such precautions shall be used relative to the prevention of offensive effluvia as said Commissioner may direct. Any person or persons violating the provisions of this section, or neglecting or refusing to comply with the regulations of the Commissioner of Health in relation to the opening or cleaning of privies, cesspool or vaults, shall be liable to a penalty of Ten Dollars for every such offense.

City Code (1927), art. 16, sec. 252. 1893, art. 23, sec. 101A. Ord. 34, Mar. 28, 1890.

192. The Commissioner of Health is empowered to grant such permits, as he may consider advisable for the purpose of draining such wells or cesspools as cannot be kept from overflowing or filling up with water. All work to be done under the supervision of said Commissioner, except so much as relates to the tapping of sewers, which work shall be done by the Bureau of Sewers, and also upon the payment of the usual fees for the privileges of opening the streets; and all repairs to the streets and sewers to be done by the owners of the property subject to the approval of the Bureau of Sewers.

City Code (1927), art. 16, sec. 253. Ord. 67 (1901-02).

193. It shall be unlawful for any person or persons, or corporation, to bring into or carry, or transport through the streets of the City of Baltimore, night soil removed from any privy, well or sink located beyond and outside of the corporate limits of said city;

and every person or persons or corporation violating the provisions of this section shall be subject to a fine of Twenty-five Dollars ($25) for each offense, said fine to be collected as other fines for violation of city ordinances are collectible.

City Code (1927), art. 16, sec. 254. 1893, art. 23, sec. 102. Ord. 94, June 17, 1886.

194. Books shall be kept in the office of the Commissioner of Health in which shall be entered all applications for opening or cleaning of privies, cesspools or vaults, and all such applications shall specify the number of loads, if less than the whole contents of the privy, cesspool or vault to be removed.

City Code (1927), art. 16, sec. 255. 1893, art. 23, sec. 103. Ord. 94, June 17, 1886.

195. No part of the contents of any privy, cesspool or vault shall be removed therefrom, nor shall the same be transported through any of the streets, lanes or alleys, or other places within the city, except the same be transported or removed by means of some air-tight apparatus, so as to prevent the said contents from being agitated or exposed in the open air during said process of removal or transportation; and any person or persons violating the provisions of this section shall be liable to a penalty of not less than Ten Dollars for every such offense.

REPORTABLE DISEASES

City Code (1927), art. 16, sec. 278. 1879, art. 23, sec. 119. 1893, art. 23, sec. 126. Ord. 81, June 19, 1888. Ord. 112, June 6, 1891. Ord. 11 (1891-92). Ord. 20 (1895-96). Ord. 567 (1946-47).

196. There shall be a vaccine physician who shall vaccinate successfully all such persons as may be pointed out by the Commissioner of Health as susceptible to smallpox contagion.

City Code (1927), art. 16, sec. 287. 1893, art. 23, sec. 164. Ord. 125, October 24, 1882. Ord. 22, May 20, 1890. Ord. 83 (1894-95). Ord. 429 (1913-14).

197. Every physician shall report to the Commissioner of Health in writing, upon blanks to be furnished by said Commissioner, every person having small-pox, cholera, yellow-fever, diphtheria, measles, whooping cough, mumps, pseudo membraneous croup, scarlet fever, varioloid, typhoid fever, opthalmia neonatorum, cerebro-spinal meningitis epidemica and poliomyelitis anterior acuta (infantile paralysis), and his or her place of dwelling and name, if known; such report to be made immediately after a positive diagnosis shall have been made.

City Code (1927), art. 16, sec. 291. 1893, art. 23, sec. 166. Ord. 125, Oct. 24, 1882. Ord. 569 (1946-47), sec. 291.

198. The keepers of all hotels and boarding houses, and the agents and owners of all tenement houses, or private residences or dwelling houses, having any person or persons in their hotels,

boarding houses, tenement houses or private residences, or dwelling houses, suffering from or afflicted with any communicable disease, as mentioned in Section 197, after they shall have become acquainted with the fact, or are apprised of the same, shall immediately notify the Commissioner of Health, stating the name of the person or persons so afflicted, the age and residence or location, and such other facts or information as they may be in possession of. Any such keeper, owner or clerk of any hotel or boarding house, or any such agent or owner of any tenement house, private residence or dwelling house, who shall fail, or neglect to notify, in writing the Commissioner of Health, within twenty-four hours, of such case of communicable disease, after having become aware, apprised or informed of the same, shall be subject to the penalties herein specified.

City Code (1927), art. 16, sec. 292. 1893, art. 23, sec. 167. Ord. 125, October 24, 1882.

199. The commissioners, managers, principals, or other proper person or head officer of each and every public or private institution in the city, where persons lodge or abide temporarily or permanently, shall report, in writing, the name, if known, and the condition and disease of any and every person being thereat, and sick of smallpox, cholera or yellow fever, malignant diphtheria, scarlet fever and varioloid.

City Code (1927), art. 16, sec. 293. 1893, art. 23, sec. 168. Ord. 125, October 24, 1882.

200. The master, chief officer or consignee, or any of them, of every vessel not being in quarantine or within quarantine limits, but being within one-fourth of a mile of any dock, wharf or building of the city, having on board any contagious disease, shall report to the Commissioner of Health, or cause to be reported, immediately, in writing, the particular location of said vessel and its name, and shall in said report state the name, disease and condition of any person being in or on such vessel, and sick of any contagious disease, as aforesaid.

City Code (1927), art. 16, sec. 294. 1893, art. 23, sec. 169. Ord. 125, October 24, 1882.

201. No person shall bring to any dock, wharf or building, or within one thousand feet thereof, in the city, or unload at any dock, building or pier therein, or have on storage in the city, any skins, fish, rags, bones, hides or similar articles or materials which have been brought from any infected place without, or otherwise, than according to a written permit so to do from the Commissioner of Health; and no person shall sell, exchange or in any way make any exposure of any straw, bedding, clothing or articles that have been exposed to any contagious disease, or are liable to communicate such disease, till after the same shall have been adequately cleansed or disinfected, and a written permit so to do obtained from the Commissioner of Health.

City Code (1927), art. 16, sec. 295. 1893, art. 23, sec. 170. Ord. 125, October 24, 1882.

202. No person shall, within the city, without a permit from the Commissioner of Health, carry or remove from one building to another, or from one vessel to the shore, any person sick of any contagious disease; nor shall any person, by any exposure of any individual sick of any contagious disease, or of the body of such person, or by any negligent act connected therewith, or in respect of the care or custody thereof, or by a needless exposure of himself, cause or contribute to, or promote the spread of disease from any such person or from any dead body.

City Code (1927), art. 16, sec. 296. 1893, art. 23, sec. 171. Ord. 125, October 24, 1882.

203. All bodies of persons who shall have died of any of the contagious diseases mentioned in Section 197, shall be buried within twenty-four hours after death, unless extension of time shall be granted by the Health Commissioner; and no such body shall be exposed to the peril or prejudice of the life or health of any person.

City Code (1927), art. 16, sec. 297. 1893, art. 23, sec. 172. Ord. 125, October 24, 1882.

204. Whenever a disease of a contagious and infectious character is discovered to exist in any dwelling-house or building within the city, and which is situated in an unhealthy or crowded part of the same, and is in a filthy and neglected state, or is inhabited by too many persons, the said Commissioner of Health, by advice and consent of the Mayor, may, and at the expense of the city, compel the inhabitants of such dwelling-house to remove therefrom, and may place them in such buildings or temporary structures in some more salubrious situation, until measures can be taken, under the direction and at the expense of the city, for the immediate cleansing, ventilation, purification and disinfection of such dwelling.

City Code (1927), art. 16, sec. 298. 1893, art. 23, sec. 173. Ord. 125, October 24, 1882.

205. The Commissioner of Health, with the approbation of the Mayor, may cause all houses, districts or parts of districts where contagious and infectious diseases exist, as mentioned in Section 197, to be fenced in and guarded by sentinels; and said commissioner may also, in such cases, with the approbation of the Mayor, furnish such subsistence and clothing as may be necessary during the time said district or part of district may be fenced in as above; the expense of the same to be borne by the city.

City Code (1927), art. 16, sec. 299. 1893, art. 23, sec. 174. Ord. 125, October 24, 1882.

206. When a disease dangerous to the public health exists, and in order to prevent the spreading of the same, the Commissioner of Health, with the approval of the Mayor, shall have power to rent halls, dwelling houses and other suitable places, or to have erected such temporary structures for a hospital or place of reception for the sick and infected, as is judged best for their accommodation and

the safety of the inhabitants, which shall be subject to such rules and regulations as the Commissioner of Health, with the approval of the Mayor, may prescribe; and the Commissioner of Health may cause any sick and infected person to be removed thereto, unless the condition of such person will not admit of his or her removal without danger to his or her health, in which case the house or place where he or she remains shall be considered as a hospital; and all persons residing in, or in any way concerned within the same, shall be subject to such regulations as may be prescribed by the Commissioner of Health, with the approval of the Mayor.

City Code (1927), art. 16, sec. 300. 1893, art. 23, sec. 175. Ord. 125, October 24, 1882.

207. When such disease is found to exist, the Commisssioner of Health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places by displaying a yellow flag on the premises where said infectious disease exists, and by all other means, which, in his judgment, shall be most effectual for the common safety; and whoever obstructs the Commissioner of Health or his agents in using such means to prevent the spreading of the infection, or wilfully removes, obliterates, defaces or handles the yellow flags or other signals so displayed, shall be subject to such fines and penalties as prescribed in Section 213.

City Code (1927), art. 16, sec. 301. 1893, art. 23, sec. 176. Ord. 125, October 24, 1882.

208. Whenever the Commissioner of Health may have just cause to suspect that any baggage, clothing, bedding or goods of any character, found in the city, are infected with any contagious or infectious diseases, which may be dangerous to the public health, he shall proceed to the nearest magistrate, and obtain a warrant, and have said goods removed to such place as he may deem best, or otherwise detained until, in the opinion of the Commissioner of Health, they are freed from infection.

City Code (1927), art. 16, sec. 302. 1893, art. 23, sec. 177. Ord. 125, October 24, 1882.

209. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of one year, and re-vaccinated whenever the Commissioner of Health shall, after five years from the last vaccination, require it.

City Code (1927), art. 16, sec. 303. 1893, art. 23, sec. 178. Ord. 125, October 24, 1882.

210. The Commissioner of Health shall require and enforce the vaccination of all persons residing in the city and not before vaccinated, and the re-vaccination of any person in the infected district, whenever, in his opinion, the same may be necessary.

City Code (1927), art. 16, sec. 305. 1893, art. 23, sec. 180. Ord. 125, October 24, 1882.

211. It shall not be lawful for any person or persons having hackney coaches, buggies, cabs or gigs for hire, to hire or cause or

permit the same to be hired or loaned, or in any manner to be used, by any person or persons, for the purpose of conveying a dead body, known or supposed to have died from small-pox, scarlet fever, diphtheria, or any other infectious diseases, to or from any dwelling or public building, to any cemetery or other point within or through the city, unless they conform to the restriction in Section 304.[1]

City Code (1927), art. 16, sec. 306. 1893, art. 23, sec. 181. Ord. 125, Oct. 24, 1882. Ord. 569 (1946-47), sec. 306.

212. In every case where there has been smallpox, diphtheria, scarlet fever or other communicable diseases, and the sick person has either died or been removed from the premises where the disease existed, and the occupant or occupants have vacated the property without causing a thorough and complete disinfection of said property, then it shall be the duty of the owner or owners of said property to have said premises properly disinfected before permitting any person or persons to visit the property for the purpose of becoming tenant or tenants, owner or owners of said premises.

City Code (1927), art. 16, sec. 307. 1893, art. 23, sec. 182. Ord. 125, October 24, 1882.

213. The Commissioner of Health, whenever in his judgment he may deem it expedient to properly vaccinate the citizens of Baltimore, may, with the advice and consent of the Mayor, appoint extra vaccine physicians to fully carry into effect the provisions of this section of this article.

City Code (1927), art. 16, sec. 308. 1893, art. 23, sec. 183. Ord. 125, October 24, 1882. Ord. 108 (1911-12).

214. Any person who violates, disobeys, omits, neglects or refuses to comply with, or who resists any of the provisions of Sections 197 to 213, inclusive, of this Article, shall be fined not less than One Dollar nor more than One Hundred Dollars for each offense; except that the fine for the refusal to vaccinate shall not exceed Ten Dollars.

Quarantine

Ord. 217 (1945-46), sec. 1.

215. Any person having diphtheria, gonorrhea, meningococcus meningitis, ophthalmia neonatorum, poliomyelitis, smallpox, syphilis, tuberculosis, or typhoid fever, or any other communicable disease dangerous to the public health and in a communicable or potentially communicable stage of the disease shall be quarantined and isolated in accordance with the rules and regulations prescribed by the Commissioner of Health; and when any such person refuses or neglects to be properly quarantined or isolated in accordance with said rules and regulations, or by reason of his or her non-cooperation or carelessness endangers the public health, such person shall be guilty of a misdemeanor and upon conviction

[1] Sec. 304 repealed by Ord. 570 (1946-47).

thereof shall in the discretion of the Police Magistrate be quarantined or isolated in a hospital or other place designated by the Commissioner of Health for that purpose, or shall be subject to a fine as prescribed in Section 218 hereof, or both.

All papers pertaining to any proceeding for such quarantine or isolation shall, if placed on file as a Court record, be sealed and withheld from inspection; and no person shall be allowed access thereto except upon an order of a Judge of the Supreme Bench of Baltimore City. No order for access and inspection shall be granted except on due notice to the person named therein as the suspected person and on good cause shown.

Ord. 217 (1945-46), sec. 2.

216. Upon receiving a report of the existence of a case, or suspected case of a communicable disease, or a communicable disease carrier, the Commissioner of Health shall make such investigation as he may deem necessary for the purpose of ascertaining the source of infection and for the restriction of movement, or for the isolation or quarantine of such case, suspected case, or carrier. Any person having or suspected by the Commissioner of Health on reasonable grounds, of having a communicable disease, or any person who is a communicable disease carrier, or who is a contact of such person shall, upon request by the Commissioner of Health, submit to an examination by a qualified examiner designated by the Commsisioner of Health for the purpose of ascertaining the existence of a communicable disease or carrier. The required examination may be made by the Commissioner of Health or by a physician selected by him, or, at the option of the person to be examined, by a licensed physician who is qualified to make such medical examinations. The physician making such examination shall promptly report thereon to the Commissioner of Health, but shall not issue a certificate of freedom from disease to or for the person examined. Such infected person or carrier or contact of such person shall, upon request by the Commissioner of Health, submit specimens of body fluids, secretion, excretion or discharges for laboratory examination.

Ord. 217 (1945-46), sec. 3.

217. The Commissioner of Health of Baltimore City is hereby authorized and empowered to make and adopt such rules and regulations as he may deem proper and necessary for the enforcement of this sub-title for the better protection of the health of the city. With the exception of the provisions as to quarantine and isolation, nothing in this sub-title shall be construed to apply to or interfere with persons bona fide practicing Christian Science and receiving treatment from registered Christian Science practitioners.

Ord. 217 (1945-46), sec. 4.

218. Any person violating any of the provisions of Sections 215-218, or any order or regulation made and adopted by the

Commissioner of Health of Baltimore City in pursuance hereof, shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine not exceeding One Hundred Dollars ($100.00) and each day's violation shall constitute a separate offense.

RABBITS*

Ord. 294 (1940-41), sec. 1.

218A. No person, firm or corporation shall bring or import into the City of Baltimore for sale any wild rabbits or wild hares, dead or alive, or shall sell or offer for sale any such imported wild rabbits or wild hares. Provided, however, that zoological gardens operated under public authority, or laboratories in which scientific research is being carried out, may receive or import rabbits in conformity with such rules and regulations as may be prescribed by the Commissioner of Health of the City of Baltimore.

Ord. 294 (1940-41), sec. 2.

218B. This sub-title insofar as it prohibits the importation of wild rabbits and wild hares shall not apply to such rabbits or hares known as domesticated rabbits or hares, that have been bred and kept under supervision in properly maintained and sanitary rabbitries.

Ord. 294 (1940-41), sec. 3.

218C. The Commissioner of Health of Baltimore City is hereby authorized and empowered to make and adopt such rules and regulations as he may deem proper and necessary for the enforcement of this sub-title and for the better protection of the health of the people of the city.

Ord. 294 (1940-41), sec. 4.

218D. Any person violating any of the provisions of this sub-title, or any rule or regulation made and adopted by the Commissioner of Health of Baltimore City in pursuance thereof, shall be guilty of a misdemeanor and shall be subject to a fine of not exceeding Fifty Dollars ($50) for each offense, and the rabbits and hares so imported into the City of Baltimore shall be condemned by the Commissioner of Health or his authorized representative and disposed of in satisfactory compliance with the intent of this sub-title and regulations of the Commissioner of Health pertaining thereto.

SEATS FOR FEMALES

City Code (1927), art. 16, sec. 218. Ord. 547 (1910-11).

219. It shall be the duty of the Commissioner of Health to inspect, or to cause to be inspected, by his duly authorized agents

* In the City Code of 1950 this ordinance was codified as Sections 66-69 of Article 24.

any and all mercantile or manufacturing establishments in the City of Baltimore, in which females shall be employed, and to ascertain whether the proprietors of such establishments comply with Section 339 of the City Charter (1949 Ed.); and whenever he shall be of the opinion that the proprietors of such establishments are violating the provisions of said section, he shall notify such proprietor or proprietors, and if such violations shall continue after said notice by the Commissioner of Health, the said Commissioner is hereby directed to report such violation of the said section to the State's Attorney of Baltimore City for his action in the premises.

VITAL STATISTICS

City Code (1927), art. 16, sec. 359. 1893, art. 42, sec. 1. Ord. 102, May 24, 1884.

220. The Commissioner of Health shall provide suitable books, in which he shall register in the manner hereinafter directed, the returns made to him of the births and deaths which may occur in the City of Baltimore, together with the reported cause of death in each case.

City Code (1927), art. 16, sec. 360. 1893, art. 42, sec. 2. Ord. 102, May 24, 1884. Ord. 112 (1904-05).

221. When any person shall die in said City of Baltimore and the case does not come under the notice of the Medical Examiner, it shall be the duty of the physician who attended during the last illness of such deceased person to furnish, within eighteen hours after the death, to the undertaker having in charge the preparation of the body for burial, a certificate setting forth, as far as the same can be ascertained, the full name, age, color, sex, nativity, occupation, whether married or single, duration of residence in the City of Baltimore, cause, date and place of death and duration of last illness of such deceased person; and it shall then be the duty of the undertaker having in charge the preparation of such body for burial to state in such certificate the date and place of burial, and, having signed the same, to furnish and deliver it to the Commissioner of Health within twenty-four hours after the receipt of said certificate from the physician as aforesaid; provided, that in case of death from any infectious or contagious disease, said certificate shall be so made by the undertaker and delivered to the Commissioner of Health forthwith upon its receipt from the physician.

Young v. College, 81 Md. 358.

City Code (1927), art. 16, sec. 361. Ord. 112 (1904-05), sec. 2A.

222. When any person shall die in said city, and the case comes under the notice of the Medical Examiner, it shall be the duty of the Medical Examiner, within eighteen hours after the death, to furnish to the undertaker having in charge the preparation of the body for burial, the certificate called for by Section 221; provided, that in cases where the Medical Examiner is unable to furnish said certificate to the undertaker within said eighteen hours because

further time is required by him for investigation as to the cause of death, then the Medical Examiner shall have further time in which to make and furnish such certificate to the undertaker, and shall in this event furnish such certificate as soon as practicable after the death; and upon receipt of such certificate by the undertaker it shall thereupon be his duty to state in such certificate the date and place of burial, and, having signed the same, to furnish and deliver it to the Commissioner of Health within twenty-four hours after the receipt of the same from the Medical Examiner as aforesaid; provided, that in case of death from any infectious or contagious disease said certificate shall be so made by the undertaker and delivered to the Commissioner of Health forthwith upon its receipt from the Medical Examiner.

City Code (1927), art. 16, sec. 362. Ord. 112 (1904-05), sec. 2B.

223. In the certificate required to be furnished by the Medical Examiner to the undertaker in accordance with the preceding section, the Medical Examiner shall in all cases certify the cause of death, and shall state whether the death was due to natural causes, accident, suicide or homicide.

City Code (1927), art. 16, sec. 363. 1893, art. 42, sec. 3.
Ord. 102, May 24, 1884.

224. No interment or disinterment of the dead body of any human being or disposition thereof in any tomb, vault or cemetery, shall be made within the City of Baltimore, without a permit granted therefor by the Commissioner of Health, and no sexton, undertaker or other person shall assist in, or assent to, or allow such interment or disinterment, or aid, or assist about preparing any grave or place of deposit for any such body for which such permit has not been given authorizing the same. And it shall be the duty of every person who shall receive any such permit to preserve and return the same to the office of the Health Department before twelve o'clock M. on the Saturday next succeeding the date of burial or removal of the body. Provided, however, that after a permit has been given no additional permit shall be required to remove the body from one place to another place in the same cemetery.

City Code (1927), art. 16, sec. 364. 1893, art. 42, sec. 4.
Ord. 102, May 24, 1884.

225. In case any person shall die without the attendance of a physician, or if the physician who did attend at the time of death refuses or neglects to furnish a certificate as aforesaid, it shall be the duty of the undertaker or other person acquainted with the facts to report the same to the Commissioner of Health, who shall be authorized to give a certificate of death as aforesaid, provided it be not a case requiring the attendance of a medical examiner.

City Code (1927), art. 16, sec. 365. 1893, art. 42, sec. 5. Ord. 102, May 24, 1884.

226. In case any physician or medical examiner shall refuse or neglect to furnish said certificate as aforesaid, he shall forfeit and pay the sum of Ten Dollars ($10.00) for each and every offense; and any undertaker, sexton or other person removing the dead body of any person, or having charge of any vaults, burying-grounds or cemeteries, who refuses or neglects to perform any of the duties required by this sub-title, shall forfeit and pay the sum of Twenty Dollars ($20.00), which sum shall be recovered as other fines and forfeitures are recoverable.

City Code (1927), art. 16, sec. 366. 1893, art. 42, sec. 6. Ord. 102, May 24, 1884. Ord. 103 (1904-05).

227. No dead body or part of the dead body of any human being shall be in any manner conveyed or carried from, in, to, or through the City of Baltimore by any person or by means of any boats, vessel, car, stage, or other vehicle, or by any public or private conveyance, without a permit therefor first granted by the Commissioner of Health; and when the dead body or any part of the dead body of any person is to be conveyed, transferred or removed beyond the limits of the City of Baltimore, it shall be the duty of the person or agent or officer of the corporation having charge of the conveyance, transfer, or removal, to detach, sign and return the coupon attached to said permit to the Commissioner of Health before twelve (12) o'clock M. on Saturday next succeeding the conveyance, removal or transfer of said dead body; and any person or persons who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than Ten or more than Fifty Dollars for each offense.

City Code (1927), art. 16, sec. 367. 1893, art. 42, sec. 7. Ord. 102, May 24, 1884.

228. Every person practicing midwifery in the City of Baltimore, under whose charge or superintendence a birth shall hereafter take place, shall keep a true and exact register of such birth, and shall enter the same on a blank schedule to be furnished by the Commissioner of Health. This schedule shall contain a list of the births which have occurred under his or her care during the month, and shall set forth, as far as the same can be ascertained, the full name of each child (if any shall have been conferred), its sex, color, the full name and occupation of its parents, the date and place of its birth; and the said schedule shall be duly signed by the practitioner in the form of a certificate, between the first and third day of each and every month, to the office of the Commissioner of Health. In case the birth of any child shall occur without the attendance of a physician or a practitioner of midwifery, or should no other person be in attendance upon the mother immediately thereafter, it shall become the duty of the parent or parents of such child to report its birth to the Commissioner of Health, in the

manner and within the period above required; and any such person or persons who shall hereafter fail to comply with the provisions of this section shall be subjected to a fine of Ten Dollars ($10) for each offense, to be recovered as other fines and forfeitures are recoverable.

City Code (1927), art 16, sec. 368. 1893, art. 42, sec. 8. Ord. 102, May 24, 1884.

229. It shall be the duty of every physician, midwife, undertaker, sexton or superintendent of any cemetery, or other person having charge of the same, within the City of Baltimore, to register his or her name in a book or books, to be provided for such purpose at the office of the Commissioner of Health, giving full name, residence and place of business, and in case of removal from one place to another in said city, to make change in said register accordingly. And any physician, midwife, undertaker, sexton, or superintendent of any cemetery who shall refuse or neglect to register his or her name, residence or place of business, or who shall refuse or neglect to perform any other of the duties required as aforesaid, shall forfeit and pay for each offense the sum of Ten Dollars ($10), to be recovered as other fines and forfeitures are recoverable.

City Code (1927), art 16, sec. 369. Ord. 114 (1897-99). Ord. 246 (1912-13).

230. The Commissioner of Health shall have authority to issue a transcript of birth or death upon the request in writing of a responsible person, for which he shall charge the sum of Fifty Cents for each and every one furnished. Whenever, however, the person making application for a transcript of birth shall set forth in said written application that the said transcript is wanted solely for the purpose of meeting some requirement of the Maryland State law or of some Baltimore City ordinance regulating the work and employment of minors, then said certificate or transcript of birth shall be furnished without charge.

Whenever a search of the records is made without result, a similar charge shall be made for a certificate stating such facts, except when such applicant shall fail to furnish the full data, when a special charge of not more than One Dollar shall be made; but no charge shall be made, even in a failure of search, if the application be for a transcript of birth and said transcript is sought in connection with any law or ordinance regulating the employment of minors.

The Commissioner of Health shall account to the City Comptroller monthly for all moneys received by his department from the above charges.

City Code (1927), art. 16, sec. 370. 1893, art. 42, sec. 9. Ord. 102, May 24, 1884. Ord. 177 (1904-05).

231. The registry of births and deaths shall be kept in separate books, with general indexes to the respective records, and said

register shall at all times be accessible to the public, except for purposes of commercial solicitation or private gain, under such restrictions and regulations as to time, place, transcripts and abstracts therefrom, as may be imposed by the Commissioner of Health, or by any ordinance of the Mayor and City Council of Baltimore.

City Code (1927), art. 16, sec. 371. 1893, art. 42, sec. 10. Ord. 102, May 24, 1884.

232. In order to secure uniformity and despatch in the registration herein provided for, the books shall contain on the margin of each page, printed titles, with corresponding blanks suitable for entries for births and deaths, in the following order: Births—full name of the child (if any shall have been conferred), sex, color, full name of the father, full name of the mother, day, month and year of the birth, street and number of the house where born, name of the physician or other person signing the certificate, and his or her residence. Deaths—full name of the deceased, color, sex, age, married or single, occupation, birthplace, date of death, cause of death, when an infant unnamed, the name of the father and mother, ward, street and number of house, and date and place of burial.

City Code (1927), art 16, sec. 372. 1893, art. 42, sec. 11. Ord. 102, May 24, 1884. Ord. 572 (1946-47).

233. The Commissioner of Health shall keep on hand at all times, a supply of blanks for gratuitous distribution to all persons whose duty it shall be to make returns under this sub-title.

City Code (1927), art. 16, sec. 373. Ord. 69 (1894-95).

234. No person or persons shall allow to be retained unburied the dead body of any human being for a longer time than four days, or where death has been caused by an infectious or contagious disease for a longer time than twenty-four hours after the death of such person without a permit from the Commissioner of Health, which permit shall specify the length of time such body may be retained unburied; any person or persons violating any of the provisions of this section shall be liable to a penalty of Fifty Dollars ($50), to be recovered as other fines and forfeitures are recoverable.

City Cemetery

City Code (1927), art. 16, sec. 240. 1879, art. 23, sec. 73. 1893, art. 23, sec. 94. Ord. 564 (1946-47).

235. Any city cemetery which the City of Baltimore has or may hereafter have is hereby placed under the control and direction of the Commissioner of Health, who is hereby authorized to establish a code of regulations relative to all interments in any such city cemetery, which in his judgment may be proper or necessary.

In reference to litigation arising out of sale of old Potter's Field, see Williamson v. Mayor, 19 Md. 413.

PLUMBING

Ord. 1251 (1930-31), sec. 1.

236. The following sections shall constitute the Plumbing Code of Baltimore City.

Scope

Ord. 1251 (1930-31), sec. 2.

237. The provisions of this sub-title shall be held to include and govern all work done and materials used;

A. In introducing, extending or maintaining a supply of water or any appurtenances thereof in any building, lot, premises or establishment;

B. In connecting or repairing any system of drainage, where foul waste water, non-polluted waste water, storm water, ground water, gas, vapor or other fluid is discharged or proposed to be discharged from any building, lot, premises or establishment into any public or private sewer or drain, or into any street gutter, or upon the surface of the ground, or into any pit box or disposal field, or other receptacle, or into any natural or artificial water course;

C. In ventilating any house sewer or any fixture or appurtenances connected thereto;

D. In excavating any public or private street, avenue, road, alley, thoroughfare, highway or space for the purpose of connecting any building, lot, premises or establishment with any service pipe, house sewer, public or private sewer or drain or other underground structure (illuminating, cooking and/or heating gas and electric service structures and any work done by or under the supervision of the Bureau of Sewers excluded) and in general;

E. In performing all classes of work usually done by plumbers;

F. Nothing in this ordinance, however, shall be construed to mean the repairing of leaks in water pipes, provided there is no interference thereby with the original design or construction.

Definition

Ord. 1251 (1930-31), sec. 3.

238. A. House sewer is that part of a house connection not less than ten (10) feet outside the outer wall of the building to the point of discharge into the public or private sewer or drain in any street, alley or right-of-way, or into a residential sewage disposal plant, or other similar receptacle.

B. House Soil Line is a continuation of the House sewer, extending from a point not less than ten (10) feet outside the outer

wall of the building through or under the foundation walls and as far as the last soil stack, which receives the discharge from all soil stacks and waste pipes within the building and conveys this discharge to the house sewer.

C. Soil Stack is any pipe that receives the discharge from one or more water closets, with or without the discharge from other fixtures, and conveys this discharge to the house soil line.

D. Waste Pipe is any pipe which receives the discharge from any fixture except a water closet and conveys the same to the house soil line.

E. Vent Pipe is any pipe provided to ventilate a plumbing or drainage system, and is the continuation of any soil or waste pipe used to prevent siphonage or back pressure, but does not receive the discharge from any fixture or fixtures.

F. Rain Water Leaders are the pipes that convey rain water from the roofs of buildings to their point of discharge on the ground, or into a drain or a combined sewer.

G. Combined Sewerage System is one which conveys household sewage, industrial wastes, surface and storm water.

H. Sanitary Sewerage System is one which conveys only household sewage, industrial or other polluted wastes.

I. Storm Water Drainage System is one which conveys only surface water, storm water or wastes of a similar non-polluted character.

J. Private Sewer or Private Drain is the name applied to sewers and drains located in streets, alleys, thoroughfares or rights of way, but which are not owned by the municipality.

K. Master Plumber within the meaning of the provisions of this sub-title, is a person who holds a master plumber's certificate, issued by authority contained in Article 4 of the Baltimore City Charter and Public Local Laws of Maryland,[1] containing his business address, and who represents the industry of plumbing and who engages in or works at the plumbing business on his own account or directs other workmen in this line, and who has an established place of business in the City of Baltimore other than his residence or the buildings on which he may be employed. This Ordinance shall not, however, prevent a master plumber from having his store and dwelling combined, provided the store fronts on a public thoroughfare and has proper signs displayed and a separate entrance provided.

It shall be the Master Plumber's duty to exhibit his certificate of competency as a master plumber to the Department of Health, where he shall be registered in a book provided for that purpose, giving his full name, residence and place of business, and in case

[1] The local law has been repealed, as the subject matter is covered by Secs. 318-325 of Article 43 of the Annotated Code of Md. (1939 Ed.).

of removal from one place to another in said city, he shall immediately have the record in the register changed accordingly. It shall be the duty of every such person or persons to display at his or their place of business, in a conspicuous place, a sign with the full registered name or names, and the words "Registered Plumber" or "Registered Plumbers" in letters not less than two (2) inches in height.

Duties of Chief Inspector of Plumbing

Ord. 1251 (1930-31), sec. 4.

239. It shall be the duty of the Chief Inspector of Plumbing, under the direction of the Commissioner of Health, to sign and issue all notices and certificates, to keep a daily record of his work, including all notices and applications received, violations of any provision or provisions of this Ordinance, and all other matters which may pertain to his work; to make weekly and monthly reports and an annual report of the operation of the office to the Commissioner of Health.

He or any one of his assistants shall inspect all houses in the course of erection, alteration or repair, as often as may be necessary, and shall see that all plumbing, drainage and/or sewerage work is done in accordance with the provisions of this sub-title.

It shall be the further duty of the Chief Inspector of Plumbing or one of his assistants, under the supervision of the Commissioner of Health, to see that all work covered by these provisions is executed by persons properly qualified under Article 4 of the Public Local Laws of Maryland, and to report any violations of Article 4 to the proper officials for their action.[1]

The Chief Inspector of Plumbing, under the supervision of the Commissioner of Health, shall regulate the quality, size and kind of materials used in the construction of said work.

No person shall be appointed as a Chief Inspector unless he shall hold a license as Master Plumber. He shall not, during his term of office, be engaged or financially interested in the plumbing business or the sale of any plumbing supplies, nor shall he act as agent either directly or indirectly for any person so engaged.

Authority

Ord. 1251 (1930-31), sec. 5.

240. Par. 1. All plumbing or drainage work shall be under the supervision of the Commissioner of Health, who shall issue permits therefor. It shall be the duty of the Commissioner of Health, upon the issuance of a permit for any work of new installation, altering or repairing of any plumbing or drainage work to at once furnish a duplicate copy of said permit to the Building Inspection Engineer, who shall have full power to control any work that shall affect structural conditions of any house or structure of any kind.

The Building Inspection Engineer and Commissioner of Health shall formulate such rules and regulations (not inconsistent with

[1] See footnote to Sec. 238.

this sub-title) for work under this sub-title as shall be necessary for the public safety as it may be affected by the operations of the Department of Public Works and Department of Health.

No building operation shall be undertaken unless and until satisfactory evidence shall be furnished to the Chief Inspector of Plumbing that adequate and approved sewerage and water supply are available or can be provided for said building or structure.

Par. 2. The provisions of this sub-title shall apply to all public or private sewers or drains wherever situated, and all other municipal ordinances pertaining to the work herein governed must be complied with. When it is necessary to make connection to any private sewer or drain, permission of the owner of said sewer or drain must be obtained in writing; such permission shall be in triplicate and must be filed with the proper municipal authorities.

No person, firm or corporation shall open, tap, repair or close any sewer, public or private, without proper permit so to do from the municipal authorities in charge of such work. No person, firm or corporation shall enter any manhole or any sewer or storm water drain or tamper with or disturb any sewer or storm water drain or appurtenance thereto without a permit so to do from the municipal authorities in charge of the same.

Cesspools, Privies and Vaults

Ord. 1251 (1930-31), sec. 6.

241. The use of a cesspool, privy or privy-vault as part of a plumbing or drainage system shall be abandoned as soon as possible after a public sewer has been constructed in any street, alley, thoroughfare or right-of-way adjoining the premises in question, and such use shall in all cases be abandoned within the time set so to discontinue such use, stated in a notice so to do from the Commissioner of Health.

All such vaults and cesspools allowed to be used shall be so constructed that no offensive or injurious odor or gas can escape, either directly or through the fixtures connecting thereto. Every abandoned cesspool shall be emptied, cleaned, disinfected, and permanently filled with clean fresh earth; provided, however, that clean ashes or other approved material may be used with permission of the Chief Inspector of Plumbing.

Every well or cesspool shall be covered with stone or reinforced concrete slab not less than four inches thick, or with iron not less than one inch thick; shall be at least twenty (20) feet deep and not less than five (5) feet in diameter, and walled up with brick or stone, properly and satisfactorily built; and if such wall or cesspool is used as a drop privy, the full length and width of the floor thereof shall be covered with material of the kind and thickness above prescribed. All drop privies shall be water-tight, with a minimum of ten (10) feet in depth.

Ord. 1251 (1930-31), sec. 7.

242. Par. 1. No plumbing system, bath tub, wash-bowl, sink, water closet, urinal, hot-water storage tank for domestic use, or other plumbing or drainage fixture, shall be installed, altered or removed; no sanitary drainage connection of any kind shall be made; no sewer, house drain, soil pipe, waste pipe, vent pipe or water supply pipe shall be placed, connected, altered or removed in or about any building or structure within the corporate limits of the City of Baltimore, without a permit signed by the Chief Inspector of Plumbing and approved by the Commissioner of Health or his assistant; provided, however, that the above provisions of this section shall not apply to water piping in high or low pressure steam systems; water piping for steam, hot water and vapor heating system; refrigerator systems, fire protection or automatic sprinkler systems; excepting that a plumbing permit must be issued on the installation of the final waste pipe connection or connections made directly to the santiary or storm water sewers or to branches from the same.

The Commissioner of Health shall charge One Dollar ($1.00) for every permit issued by him, which shall authorize the installation of only one fixture, and in all cases in which he shall issue a permit authorizing the installation of more than one fixture, he shall charge the further sum of Twenty-five cents ($.25) for each additional fixture so authorized. A charge of Fifty cents ($.50) shall be made for a permit authorizing the replacement of one or more fixtures in any one building.

No person shall construct, alter or repair any plumbing or drainage work in the City of Baltimore without first making application to and receiving from the Department of Health a permit, which shall be signed by the Chief Inspector of Plumbing and countersigned by the Commissioner of Health or his assistant.

Blank forms of applications shall be furnished by the Department of Health to qualified master plumbers. All applications must be signed by the owner of the premises or his authorized representative or agent, and his address written under his signature.

The conditions of such permits must be strictly complied with and the work shall be done by the registered master plumber to whom the permit shall have been issued, or under his supervision and by journeymen in his employ.

Par. 2. No person, firm or corporation carrying on the plumbing business shall allow his, their or its name to be used by any other person, firm or corporation, directly or indirectly, either to obtain a permit or permits, send in notices, make returns, or do any work under his, their or its license. Violations of this provision shall be deemed sufficient cause for withholding all permits from the person or persons guilty thereof, and may also be deemed sufficient cause for recommendation for the permanent revocation of the license held by the violator.

No permit or permits shall be issued to any licensed master plumber during the time that he shall fail to remedy any defective work after the sending of a written notice to him at his address as shown in the Register of Licensed Master Plumbers by the Chief Inspector of Plumbing, such notice to state that he has been held responsible for such defective work under the stipulations of this sub-title or the rules and regulations of the Commissioner of Health.

Bad faith or unreasonable delay in the performance of plumbing work or failure promptly to respond to official communications shall be deemed a sufficient reason for witholding permits, and the master plumber shall be held responsible for the violations of this sub-title or the rules and regulations of the Commissioner of Health by himself or any of his employees.

Before any plumbing or drainage work is undertaken, the master plumber in charge of the work shall notify the Chief Inspector of Plumbing when the work will commence. Such notices shall be given on blanks to be furnished by the Department of Health.

Any person undertaking any plumbing or drainage work before the time stated in such notice shall be liable to a penalty of not less than Five Dollars ($5.00) for each and every offense.

Permits shall be obtained from the Sewerage Engineer and be countersigned by the Chief Inspector of Plumbing for tapping sewers in private streets, private alleys or private ways and shall be approved by the Commissioner of Health or his assistant. Such permits shall contain the condition that the recipients thereof shall take all risk arising therefrom, and shall indemnify and save harmless the Mayor and City Council from all damage or costs arising out of or in connection with said work.

Under no circumstances whatever shall verbal permission, whether given by a person employed by or connected with the Mayor and City Council of Baltimore or by any other person, be considered a justification for any deviation whatever from or violation of this sub-title or the rules and regulations of the Commissioner of Health.

Plans

Ord. 1251 (1930-31), sec. 8.

243. Before any portion of the drainage system of any building, premises or establishment shall be laid or constructed, there shall be filed by the owner, or his authorized agent, with the Inspector of Plumbing, plans and specifications in triplicate therefor, showing the said system in its entirety, from its connection with such public or private sewers as may be available, or to such temporary system of sewage disposal as may be installed with the approval of the Commissioner of Health.

When in the opinion of the Chief Inspector of Plumbing the interests of the City of Baltimore are best served by so doing he may consider the description of the work as stated by the owner or his authorized agent in his application for permit therefor, as sufficient plans and specifications for such work. In general, no other or

further plans or specifications will be required for repair jobs, the installation of single fixtures or new installations in small residential projects.

The Chief Inspector of Plumbing shall promptly examine such plans and specifications and either approve or reject the same. If approved, one copy of such plans and specifications shall be retained in the files of the Chief Inspector of Plumbing and the remaining approved copies shall be returned to the owner or his authorized representative, upon demand. The approval of plans and specifications shall be made in writing by the Chief Inspector of Plumbing and countersigned by the Commissioner of Health or his assistant before any portion of the work shall be executed. No subsequent alterations shall be made in plans and specifications without the written approval of the Chief Inspector of Plumbing, and all work shall be done in strict accordance with such plans and specifications, so approved as aforesaid.

One certified set of said plumbing plans and specifications shall be in the custody of the registered plumber installing the work and shall be kept on the site of the work at all times. It shall be unlawful to do any work of plumbing or drainage on any building except in accordance with the approved drawings and specifications therefor as above required.

Inspections

Ord. 1251 (1930-31), sec. 9.

244. Every plumbing and drainage system shall, immediately after its completion, and before any of the pipes, fixtures, connections or any of the other features of its construction have been enclosed with other materials of construction or covered from view, be inspected by the Chief Inspector of Plumbing or by any of his assistants acting under his direction, and a report of every such inspection shall be made and filed in the office of the Chief Inspector of Plumbing in accordance with the rules and regulations of the Department of Health relating thereto.

The plumbing and drainage system of any building in the City of Baltimore may be inspected by the Chief Inspector of Plumbing or any of his assistants at any time. If any defects are found in the sanitary conditions of the said building due to the condition of the plumbing, the said Chief Inspector of Plumbing shall have the power to order the reconstruction of such plumbing in accordance with the provisions of this sub-title and the rules and regulations of the Commissioner of Health.

Tests

Ord. 1251 (1930-31), sec. 10.

245. During the construction of every soil, waste, vent or water supply opening of any character, as a test for the same, it shall be closed by means of a test plug, screw cap or other appropriate fitting, and no paper, wood, brick, plaster or other substitute shall be allowed for such plug. The system shall then be filled with

water for a test and the Inspector's approval shall be obtained. Plugs shall not be removed from any pipe opening except during the time the opening in the pipe is being actually worked upon, and upon completion of the work, all joints shall be permanently sealed.

If the test fails or if defects or imperfections of any kind shall be found at any such inspection, the Chief Inspector of Plumbing shall determine and direct what changes or repairs are to be made, and the master plumber in charge of the work shall provide the materials and do the work required, and in case such changes are not made and the work so required is not done within fifteen (15) days from date of written notice of such inspection, the master plumber shall be liable to the penalties stipulated for disregard of such notice, etc., and the Chief Inspector of Plumbing shall be empowered to replace or repair such defective work as regulated under Section 246.

Whenever such tests or tests as herein referred to shall have been completed in conformity with the provisions of this sub-title and the rules and regulations of the Commissioner of Health, it shall be the duty of the Chief Inspector of Plumbing to issue to the master plumber completing such work, a certificate to the effect that such work has been inspected and approved, such certificate being signed by the Chief Inspector of Plumbing, and the Commissioner of Health or his assistant.

Bond

Ord. 1251 (1930-31), sec. 11.

246. (a) Before any master plumber shall be allowed to receive permits to do plumbing or drainage work in the City of Baltimore, he shall be required to give bond to the Mayor and City Council of Baltimore in an amount within the discretion of the Commissioner of Health, but in no event to be less than Twenty-five Hundred Dollars ($2,500.00), conditioned that he shall comply, in all respects, with each and every rule and regulation of the Health Department in regard to said plumbing and drainage work, and his obligations thereunder, including all laws and ordinances of the City of Baltimore and the State of Maryland, and that he shall indemnify and save harmless the Mayor and City Council of Baltimore against and from all costs, expenses, damages, injury and/or loss to which the said Mayor and City Council of Baltimore may be subjected by reason of any wrong-doing, misconduct, want of care or skill, negligence or default on the part of said Master Plumber, his agents or employees, in or about the execution or performance of such plumbing or drainage work, and shall save and keep harmless said Mayor and City Council of Baltimore from all claims against and/or losses to it from any cause whatever in connection with his execution or performance of such plumbing or drainage work. If the said Master Plumber shall be required to give bond by virtue of the provisions of Sections 79 and 80 of Article 35 of this Code, as well as the provisions of this sub-title, then he may give one bond guaranteeing that he will comply with the requirements of both of said ordinances, the penalty of such bond to be in the

discretion of the Commissioner of Health and the Highways Engineer, but in no event to be less than Twenty-five Hundred Dollars ($2,500.00). Whenever the sureties on the bond so furnished shall be deemed by the Commissioner of Health, the Highways Engineer or the Mayor and City Council of Baltimore to be insufficient or unsatisfactory, the plumber, after ten (10) days' written notice to that effect, shall furnish and deliver a new bond to the Mayor and City Council of Baltimore, in the same penalty and on the same conditions, with surety satisfactory to the Commissioner of Health, the Highways Engineer and the Mayor and City Council of Baltimore. If the Master Plumber shall fail to furnish such new bond within ten (10) days after written notice has been mailed to his address as registered with the Chief Inspector of Plumbing, the Commissioner of Health and/or the Highways Engineer of Baltimore City may revoke all permits previously issued to such plumber, and no further permits shall be issued to him until a satisfactory bond has been furnished.

(b) Should the master plumber fail or refuse to remove and renew any materials or work which shall have been found not to be in accordance with the provisions of this sub-title and the rules and regulations or requirements of the Commissioner of Health, or to make any necessary repairs in an acceptable manner and in accordance with the requirements of this sub-title and the rules and regulations of the Commissioner of Health, within the time indicated for such removal and renewal in the notice from the Chief Inspector of Plumbing that such work or material or both, are in violation of this Ordinance or the rules and regulations or requirements of the Commissioner of Health, then the Commissioner of Health shall have authority to cause such defective materials or work to be removed and renewed or such repairs to be made as he may deem necessary or in keeping with this sub-title and the rules and regulations of the Commissioner of Health, at the expense of the plumber. All costs and expenses incurred thereby shall be chargeable and collectible from the surety on the bond furnished by the plumber, as hereinbefore prescribed. Any work performed by the Commissioner of Health as set forth in the provisions of this section, shall not relieve the plumber in any way from responsibility for any work performed by him; and any remedies or penalties herein mentioned are specifically intended to be and are in addition to any other remedies or penalties provided by the laws of Maryland and ordinances of the City of Baltimore.

The liability of the surety or sureties on any bond given under this section, shall not extend to defects in materials and workmanship discovered more than twelve (12) months after the completion of the work.

Prohibited Connections

Ord. 1251 (1930-31), sec. 12.

247. (a) No steam exhaust, boiler blow-off, drip pipe or non-polluted drainage of any character shall be connected with or dis-

charged into the System of Sanitary Sewers. Steam exhaust, boiler blow-off or drip pipes shall first discharge into a condensing tank of adequate size, vented through a wrought iron pipe not less than three (3) inches in diameter carried through the roof as other vents and connected to the city storm water drains or other outlets approved by the Sewerage Engineer and Commissioner of Health.

(b) No steam or water shall be discharged into any sewer or drain, at a temperature exceeding one hundred and forty (140) degrees Fahrenheit. The waste from low pressure steam, hot water heating systems, and fire sprinkling systems may be connected with the Sanitary Sewers or other outlet if no storm drains are available, such connection to be made only with permission and approval of the Sewerage Engineer and Commissioner of Health.

(c) No physical connection shall be permitted between a potable water supply and an industrial, fire, or other auxiliary or emergency supply. This prohibition applies to all piping systems, either inside or outside of any building or buildings. There shall not be permitted any direct connection between a well or pure water reservoir or a potable supply and any sanitary sewer or storm water drain, for the purpose of carrying away the overflow of said well or reservoir.

(d) No gasoline, kerosene or other inflammable oil of any nature whatever shall be discharged into any sanitary sewer or storm water drain. If such are present in waste water, arrangements must be made, satisfactory to the Chief Inspector of Plumbing, for their separation from such waste water before such waste water shall be discharged into any sewer or drain. No solid material, nor liquids carrying solid material in suspension, nor liquids of such nature that they may cause the precipitation of such material shall be discharged into any sewer or drain. No germicide or antiseptic liquid of such strength or in sufficient quantities to interfere with bacterial action in the disposal plant shall be discharged into any sewer or drain. No liquid which will cause corrosion of the sewers and drains shall be discharged thereinto. No obstruction of any kind shall be deposited in any storm drain, inlet or sanitary sewer. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for each offense, be subject to a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) or to imprisonment for not more than twelve (12) months, and shall also be liable for all damage caused by such violation.

(e) All such wastes as above enumerated, shall be first treated by methods approved by the Commissioner of Health and the Sewerage Engineer so as to bring them to satisfactory condition for discharge into the sewerage or drainage system. No connections for such waste shall be made to the sewerage and draining system except as approved and directed by the Sewerage Engineer and the Commissioner of Health.

Chokages

Ord. 1251 (1930-31), sec. 13.

248. In the clearing of soil or waste pipes, all holes cut in such pipes shall be tapped, threaded and closed with a metal plug made gas and water tight or repaired with a special repair plate of approved design.

When a registered master plumber is unable to relieve a chokage nuisance in any plumbing or drainage system on account of such choking nuisance being located in some street, alley, lane or thoroughfare outside of the property, he shall immediately notify the Chief Inspector of Plumbing of his inability so to do. The Chief Inspector of Plumbing shall, thereupon, through his agent or agents make relief of such chokage nuisance, and the proper costs thereof shall be billed to the property benefited.

Information

Ord. 1251 (1930-31), sec. 14.

249. Any available information in regard to size, location and/or depth of public and private sewers and drains shall be furnished to licensed master plumbers upon application in person or in writing. All reasonable care shall be taken to insure the correctness of such information, but the municipality shall make no guarantee of the correctness of information so given.

Nuisances

Ord. 1251 (1930-31), sec. 15.

250. (a) If a drainage or plumbing system becomes inadequate and a nuisance is created, the Chief Inspector of Plumbing shall order such fixtures as are connected to the same to be removed and the pipes capped until such inadequate sewer or drainage system is remedied. If, after failure to comply with such orders and after five (5) days' written notice has been given, the work has not been begun, the Chief Inspector of Plumbing shall have the right to enter such premises and remove such fixtures, and the expenses incurred incident to such order and removal or other work necessary to the abatement of such nuisance shall become a lien against said property, collectible as other public liens are collectible.

(b) When any property, land or premises or group of any of the foregoing, which individually or collectively has more than one connection to the sanitary sewer system, is altered, repaired or razed in such a manner as to make more than one connection to the sanitary sewer system unnecessary, then upon notice from the Sewerage Engineer, the owner thereof shall remove the cast iron pipe, or cut off the terra cotta pipe where no cast iron pipe is employed, from the unused connections and properly plug such connections. Refusal or failure to comply with such notice is punishable by a fine of Twenty-five Dollars ($25.00), and the Sewerage Engineer is empowered, in case of such refusal or failure, to do the

above mentioned work and collect the cost thereof from the owners of the property in question.

(c) It shall be the duty of any master plumber, in connection with his work in or about any building, land or premises as hereinbefore mentioned, to see that all abandoned or unused connections are properly plugged in keeping with the above provision.

Fixtures Below Grade

Ord. 1251 (1930-31), sec. 16.

251. Permits may be issued by the Inspector of Plumbing at his discretion and when proper application is made, for the installation of plumbing fixtures or floor drains in the cellars or basements of buildings, the floor level of which is below the grade of the street, lane, alley or other thoroughfare on which the property abuts; provided that all such permits shall be subject to the condition that the Mayor and City Council of Baltimore, in consideration of the issuance of such permits, shall not be responsible for any damages whatsoever resulting from flooding of property due to such installations below grade, but shall be saved harmless therefrom, and that a bond, so conditioned, shall be given by the person or persons obtaining such permit to the Mayor and City Council of Baltimore; provided, further, that if a bond shall be given in accordance with the requirements of Section 246 such condition may be included in said bond, in lieu of the requirement of an additional bond.

Penalties

Ord. 1251 (1930-31), sec. 17.

252. Any person or persons who individually, collectively or through others shall construct, erect, alter or repair any plumbing or drainage work in violation of any provision of this sub-title or of the rules and regulations of the Department of Health, shall be subject to a fine of not more than Twenty-five Dollars ($25.00), and to a further fine of Two Dollars ($2.00) for each day that such work shall continue in that condition after the receipt by such person or persons of a notice thereof from the Department of Health, such fines to be collected as other fines for the violation of city ordinances are collected.[1]

[1] Sec. 18, Ord. 1251 (1930-31) repealed all ordinances inconsistent therewith to extent of inconsistency.

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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 278

AARON D. FRANK,
Appellant,

vs.

STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE CRIMINAL COURT OF BALTIMORE

JURISDICTIONAL STATEMENT

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The Daily Record Co., Baltimore 3, Md.

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STATE OF MARYLAND,

Appellee.

ON APPEAL FROM THE CRIMINAL COURT OF BALTIMORE

JURISDICTIONAL STATEMENT

Appellant appeals from the final judgment of the Criminal Court of Baltimore (Part II), entered on March 17, 1958, convicting him of the crime of violating one of the health ordinances of Baltimore City and sentencing him to pay a fine of $20.00 and costs. He submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

No opinion was delivered in any of the courts below.

JURISDICTION

This prosecution was brought by the State of Maryland for violation by appellant of the provisions of Baltimore City Code (1950 Edition), Article 12, Section 120, in that a nuisance was suspected in appellant's dwelling house and he refused entry therein to a Health Department sanitarian, who sought to inspect the interior of the dwelling without a search warrant. The judgment of the Criminal Court of Baltimore (Part II) was entered on March 17, 1958. Appellant's timely petition for certiorari to review that judgment was denied by the Court of Appeals of Maryland on April 25, 1958. Throughout the proceedings below, appellant challenged the validity of the ordinance on the ground of its repugnance to the Constitution of the United States.

Notice of appeal to the Supreme Court was filed in the Criminal Court of Baltimore on June 16, 1958. The jurisdiction of the Supreme Court to review the decision of the Criminal Court of Baltimore is conferred by Title 28, United States Code, Section 1257(2), since the validity of a state statute[1] on grounds of repugnancy to the Constitution of the United States is drawn in question and the decision of the court below is in favor of its validity. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Wolf v. People of State of Colorado*, 338 U. S. 25; *Palko v. State of Connecticut*, 302 U. S. 319; *Twining v. State of New Jersey*, 211 U. S. 78; *Poulos v. New Hampshire*, 345 U. S. 395.

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[1] In this instance, a municipal ordinance; See *Poulos v. New Hampshire*, 345 U. S. 395, 402.

STATUTES INVOLVED

Baltimore City Code (1950 Edition), Article 12, Section 120, provided as of the dates involved in this case (and now provides):

> "Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars."

Amendments To The Constitution Of The United States, Article IV, provides (1 United States Code, 1952 Edition, XLIV):

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Amendments To The Constitution Of The United States, Article XIV, provides, in part (1 United States Code, 1952 Edition, XLV):

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED

1. Can a health officer of Baltimore City inspect a private home without a search warrant if the owner or occupier objects?

2. Did the Criminal Court of Baltimore (Part II) err in sustaining the validity of Baltimore City Code (1950 Edition), Article 12, Section 120, and of the proposed inspection of appellant's private dwelling house for an alleged nuisance, consisting of alleged rat infestation, undue trash and debris, sought to be made thereunder in the day time without a search warrant by a sanitarian of the Baltimore City Health Department, against appellant's objection that said section was repugnant to the Fourth and Fourteenth Amendments to the Constitution of the United States and subjected him to, and the proposed inspection constituted, an unreasonable and illegal search of his house, a wrongful trespass upon his property and a wrongful taking thereof without due process of law, all in violation of his constitutional rights under the Fourth and Fourteenth Amendments to the Constitution of the United States?

3. Did the Criminal Court of Baltimore (Part II) err in denying appellant's "Motion To Dismiss" and his "Motion for a Verdict of 'Not Guilty' " and in convicting appellant of violating said Section 120?

STATEMENT

The Mayor and City Council of Baltimore, exercising within the limits of that city all of the police power of the State of Maryland,[2] enacted an ordinance empowering

[2] The Charter and Public Local Laws of Baltimore City (Flack's 1949 Edition), Section 6, states, in part: "6. The Mayor and City Council of Baltimore shall have full power and authority to exercise

health officers who shall have cause to suspect a nuisance exists in any house to demand entry therein in the day time and providing that an owner or occupier who shall refuse to open his house and admit a free examination shall forfeit and pay for every such refusal the sum of twenty dollars. Appellant refused to open his house and admit an examination by a Health Department sanitarian who demanded entry, without a warrant, to inspect for a suspected nuisance. Appellant was convicted of violating the ordinance and he appeals, urging, as he did below, that his conviction resulted from his rightful refusal to submit to an unreasonable and illegal search of his home, sought to be made under the ordinance in violation of the Fourth Amendment, and without that due process of law assured him by the Fourteenth Amendment, to the Constitution of the United States.

On February 27, 1958, in the day time, Sanitarian Gentry of the Baltimore City Health Department, acting on a

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all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing, shall have power by ordinance, or such other method as may be provided for in its Charter. . . .:

* * * * * *

"(5) ENTRY ON PRIVATE PROPERTY

"To enter, by its officers or agents, the land or possessions of any person for the purpose of carrying out the powers enumerated in this Section 6.

* * * * * *

"(11) HEALTH AND NUISANCES

"To provide for the preservation of the health of all persons within the city; to prevent the introduction of contagious diseases within the city . . .; and to prevent and remove nuisances.

* * * * * *

"(24) POLICE POWER

"To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise said power within said limit; . . ."

complaint of rats in the neighborhood, went to appellant's private dwelling house in Baltimore City to make an inspection of the premises. The sanitarian did not have a search warrant. After inspecting the yard and the exterior of the house, the sanitarian felt he had cause to suspect the existence of a nuisance, consisting of rat infestation, trash and undue debris, inside appellant's house. He did not see any rats on the premises. He did not observe the interior of the house. Appellant emerged from the house and spoke with the health officer in the yard. The sanitarian identified himself, informed appellant of his suspicions and demanded entry to the house to inspect the basement area for rats. Appellant refused to admit the sanitarian without a search warrant. The sanitarian did not enter the house.

On February 28, 1958, Sanitarian Gentry returned to appellant's house, but did not find anyone at home. He inspected the outside of the premises again. He did not observe the interior of the house. He then appeared before Magistrate Levin, one of the police magistrates of Baltimore City, and swore out a warrant for appellant's arrest for violation of Baltimore City Code (1950 Edition), Article 12, Section 120, in that a nuisance, consisting of rat infestation, undue trash and debris, was suspected in appellant's house and appellant refused him entry thereto. On March 5, 1958, while seated in his automobile parked on the street, appellant was arrested by a police officer, taken to the station house, where he posted collateral, then released pending trial.

On March 6, 1958, appellant was brought to trial, on the charge laid in the warrant, before Magistrate Rogers, one of the Station House Magistrates of Baltimore City, in Northern District Police Station. Appellant, who had coun-

sel, waived a jury trial and freely elected to be tried by the magistrate. Appellant offered no evidence in his defense, but attacked the validity of the ordinance on constitutional grounds. The magistrate found appellant guilty and imposed a fine of $20.00 and costs. Appellant forthwith entered an appeal.

On March 17, 1958, appellant appeared in the Criminal Court of Baltimore (Part II) (Oppenheimer, J.) for trial *de novo* on his appeal, in accordance with the local practice.[3] At the trial, appellant again attacked the ordinance as being repugnant to the Constitution of the United States and hence invalid. The court rejected his contentions, convicted him and sentenced him to pay a fine of $20.00 and costs. The court delivered no opinion.

On June 16, 1958, appellant filed in the Court of Appeals of Maryland a timely petition for certiorari to the Criminal Court of Baltimore to review his conviction. In the petition he again assailed the ordinance on constitutional grounds. On April 25, 1958, the Court of Appeals denied his petition. The court did not file an opinion.

How the federal questions are presented.

At every stage of the cause, appellant vigorously attacked Baltimore City Code (1950 Edition), Article 12, Section 120, the ordinance on which the prosecution is based, on the grounds that the ordinance subjected him to an unreasonable and illegal search of his house, a wrongful trespass upon his property and a wrongful taking thereof without due process of law, all in violation of his constitutional rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, and was repugnant

[3] *Infra*, note 5.

to each of the Amendments and hence invalid (R. 1, 9, 39, 40, 44-46, 158, 159, 165-171).

In the magistrate's court, the court of first instance, the attack was made by means of an oral motion to dismiss and an oral motion for a verdict of "not guilty." Each was denied by the magistrate. These motions and the magistrate's action thereon do not appear of record, since, as is the ordinary practice in Baltimore City, the proceedings of the magistrate were not recorded by a reporter. However, the magistrate's verdict of "guilty", incorporating of necessity rejection of appellant's motions and a finding in favor of the validity of the ordinance, appears of record in this cause in the docket entries in the Criminal Court of Baltimore (R. 1, 170).

In the Criminal Court of Baltimore, which sat as an appellate court in the instant cause,[4] the validity of the ordinance was first drawn in question by appellant's motion to dismiss, made orally in open court and filed at the same time in writing, interposed by appellant before pleading to the charge (R. 9, 45, 46). The court deferred ruling on the motion until he had heard testimony (R. 9). At the close of the State's evidence, appellant again raised the question of the validity of the ordinance, now by means of a motion for a verdict of "not guilty", also made orally in open court (R. 39, 40) and filed simultaneously in writing (R. 158, 159). The court then denied both the motion to dismiss, filed earlier, and the motion for a verdict of "not guilty" (R. 1, 40). At the close of the entire case, appellant renewed both motions, but both were again denied by the court (R. 44). Each of the court's ruling on appellant's several motions necessarily sustained the validity

[4] *Infra*, note 5.

of the ordinance against appellant's objections on federal constitutional grounds.

Thereafter, appellant again attacked the validity of the ordinance and again asserted its repugnancy to the Fourth and Fourteenth Amendment in his petition for certiorari filed in the Court of Appeals of Maryland (R. 165-171). The Court of Appeals denied the petition, by endorsement thereon (R. 170), without an opinion, thereby upholding the validity of the ordinance.

Thus, throughout the proceeding, appellant clearly raised the federal questions which should have controlled the determinations made by the several courts below. He contended that proper decision of the issues so raised required a finding that the ordinance under which appellant was prosecuted was repugnant to at least one (the Fourteenth) of the federal constitutional amendments relied on by appellant and hence invalid, necessitating a verdict favorable to appellant. But on every occasion the rulings of the courts below were in favor of the validity of the ordinance.

Under the practice in Baltimore City, appellant, defendant in a criminal cause originating before one of the station house magistrates of the City, had no further appeal from his conviction by the Criminal Court of Baltimore, which usually functions as a *nisi prius* court, but which sat in this cause in the exercise of its special, appellate jurisdiction.[5] Upon denial by the Court of Appeals of Maryland, the State's court of last resort, of appellant's

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[5] Charter and Public Local Laws of Baltimore City (1949 Edition), Section 411; Laws of Maryland, 1953, Chapter 676; Annotated Code of Maryland (1951 Edition), Article 5, Section 94; 40 Opinions of the Attorney General of Maryland (1955) 641; Laws of Maryland, 1957, Chapter 399, Section 4; Annotated Code of Maryland (1957 Supplement), Article 5, Section 30; *Brack v. State*, 187 Md. 542.

petition for certiorari, addressed to that court's discretionary jurisdiction,[6] the judgment and sentence of the Criminal Court of Baltimore became and was the final judgment in the cause, rendered by the highest court of Maryland in which a decision could be had. From that judgment and sentence this appeal is brought here.[6a]

THE QUESTIONS ARE SUBSTANTIAL

Appellant, defendant in a criminal prosecution in the state courts of Maryland for violation of one of the health ordinances of Baltimore City, urged that the ordinance was invalid because repugnant to the Federal Constitution in that it subjected him to an unreasonable and unlawful search of his residence in violation of the Fourth Amendment and without the due process of law secured to him by the Fourteenth Amendment. The court below, in its verdict of "guilty", without opinion, upheld the ordinance, bringing the case within the purview of Title 28, United States Code, Section 1257(2), the jurisdictional provision relied on by appellant.

The cause presents portentous and pervasive issues arising from impingement of an attempted exercise of the police powers of the State, respecting protection of the public health, upon one of the fundamental tenets of individual liberty basic to our free society, the individual's right to be secure in the privacy of his home from arbitrary intrusion by government officials without a search or other proper warrant. The proposed search (inspection) constituted just such an arbitrary, unwarranted and unlawful invasion of privacy.

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[6] Annotated Code of Maryland (1957 Supplement) Article 5, Section 21.

[6a] *Poulos v. New Hampshire*, *supra* page 2, seems strikingly similar with regard to the steps taken below to attack the ordinance and their efficaciousness in supporting jurisdiction in this Court.

This Court has said that:

> "While the question has never been directly decided by this court, it has always been assumed that one's house cannot lawfully be searched without a search warrant except as an incident to a lawful arrest therein."[7]

And:

> "The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws."[8]

As recently as *Miller v. United States*, ... U. S. ....., 78 S. Ct. 1189, 1195, 2 L. ed. 2d 1332, 1337 (decided June 23, 1958), this Court saw fit to emphasize the sanctity of "the precious interest of privacy summed up in the ancient adage that a man's house is his castle", quoting the remarks on that principle attributed to the Earl of Chatham:

> "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter . . . All his force dares not cross the threshold of the ruined tenement!"

Aside from the question whether the Fourth Amendment should be given effect against the State in the circumstances of the instant cause,[9] it now seems settled that

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[7] *Agnello v. United States*, 269 U. S. 20, 32.

[8] *Id.*, at page 32.

[9] Appellant expects, if granted a hearing on the merits of this appeal, to present and to argue this important question also, for, while the issue may be considered by many to be closed (*Wolf v. Colorado, supra*), respectable opinion to the contrary seems to exist. (See dissenting opinion of Mr. Justice Black in *Adamson v. California*, 332 U. S. 46, 68, and opinions in *Wolf v. Colorado, supra*, of Mr. Justice Black (338 U. S. 25, 40), concurring, and Mr. Justice Rutledge (338 U. S. 25, 47), dissenting.)

protection of the security of one's privacy against arbitrary intrusion by government officers is among those guaranties basic to our free society, implicit in "the concept of ordered liberty", enforceable against the states through the Due Process Clause. *Wolf v. Colorado, supra; Palko v. Connecticut, supra; Twining v. New Jersey, supra.*

In *Wolf v. Colorado,* 338 U. S. 25, 27, 28 (1949), in dealing with the question whether a conviction in a State court violated the Due Process Clause because evidence admitted at the trial would have been excluded in a federal prosecution because obtained in a manner offending the Fourth Amendment, this Court said:

> "The security of one's privacy against arbitrary intrusion by the police — which is at the core of the Fourth Amendment — is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and basic constitutional documents of English-speaking people.
>
> "Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment."

If one were to read "health officers" in the place of "police", the Court's statement would seem to apply with no less vigor to the instant case. Certainly the search here was sought to be made solely on the authority and convenience of the sanitarian and was affirmatively sanctioned by the State in the ordinance.

Appellant was well within his constitutional rights in refusing admittance to his home to the health officer who had no warrant. He rightfully refused to comply with an ordinance purporting to authorize an unlawful search of his house without a warrant. *District of Columbia v. Little*, 85 U. S. App. D. C. 242. The instant case involves problems quite similar to those sought to be presented to this Court in that case. *District of Columbia v. Little*, 339 U. S. 1.

There the defendant-respondent was convicted in the trial court of interfering with a District of Columbia health officer by locking the door to her home, refusing the officer admittance and protesting her constitutional right to be secure from his search or inspection in the absence of a warrant. Two intermediate reviewing courts[10] found that the conviction was erroneous, on constitutional grounds, and the District petitioned this Court for certiorari.

There the obverse side, *i.e.* "important questions concerning legal provisions for protecting the health of the people by special and periodic inspection and elimination of potential sources of disease" (339 U. S., at pages 1, 2-3), of the very same questions here involved was apparently thought to be of sufficient importance to warrant this Court's granting certiorari on application of the government. That the questions are now brought here on the appeal of the citizen, and from the other side of the case, would not seem to lessen their weight and importance. Indeed, since appellant claims to seek, in his defense, no more than enforcement of one of the fundamental guaranties of individual liberty basic to our system of govern-

[10] *Little v. District of Columbia*, Municipal Court of Appeals for the District of Columbia, 62 A. 2d 874. *District of Columbia v. Little*, United States Court of Appeals for the District of Columbia Circuit, *supra*.

ment, considerations even graver than protection of the public health would now seem to militate in favor of this Court's entertaining the issues in the instant case.

Little appears to be the only case heretofore brought to this Court directly presenting, or approaching, the particular conflict here involved between the essential safeguards against unreasonable searches afforded the individual under federal constitutional guaranties and the necessary exercise by the government (of the state or other political subdivision) of its police power to protect the public health. Jurisdiction would seem to be sustained (as to the substantive questions) and plenary consideration warranted in the instant case by *Little* alone. While that case arose directly under the Fourth Amendment, that dissimilarity in the two cases would seem to be obviated by the holding in *Wolf v. Colorado* that the Fourth Amendment's prohibition against unreasonable searches is enforceable against the States.

Of course, in *Little*, this Court declined to decide the constitutional questions, applying instead its policy to dispose of a cause on non-constitutional grounds where the record permits, and this despite that such disposition (which was favorable to defendant-respondent) there rested on determination by this Court of an interpretative question (whether respondent's statements and actions constituted "interference" with the health officer within the meaning of the pertinent statutes and regulations of the District) which the lower courts had not decided.[11]

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[11] *District of Columbia v. Little*, 339 U. S. 1. Two justices dissented and advanced the dictum that ". . . the duties which the inspector was seeking to perform, under the authority of the District, were of such a reasonable, general, routine, accepted and important character, in the protection of the public health and safety, that they were being performed lawfully without such a search warrant as is

In the instant case, the validity of the search authorized by the ordinance, which appellant assails on constitutional grounds, is squarely in issue and was clearly and necessarily ruled on by the lower courts. Indeed, the claimed invalidity of the ordinance constituted appellant's chief, and almost sole, defense. While no opinions were delivered below, it is noteworthy that the Court of Appeals of Maryland, the state's highest tribunal, had, in another quite similar earlier case, carefully considered the specific questions here involved, *i.e.* the validity of Section 120 and the legality of an inspection sought to be made thereunder by a Health Department officer without a warrant as against the Fourth and Fourteenth Amendments, and had fully expressed itself in support of the validity and constitutionality of the ordinance. *Givner v. State of Maryland*, 210 Md. 484.[12] The rule of *Givner* was of course binding on the trial magistrate and on the Criminal Court of Baltimore.

The determinations of federal constitutional principles made in *Givner* collide head-on with exactly contrary holdings on essentially the same (in view of *Wolf v. Colorado, supra*) issues made by the United States Court of

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required by the Fourth Amendment to protect the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." 339 U. S., at pages 1, 8-9. The existence and tenor of the dissent would seem to point up the importance of the problem.

[12] In *Givner*, representatives of the Commissioner of Health, the Building Inspection Engineer and the Fire Department, an Electrical Inspector and a uniformed policeman requested permission to enter defendant-appellant's apartment to make inspections and were refused entry. Defendant was then indicted and convicted for violating three provisions of the Baltimore City Code. The first count charged violation of Article 12, Section 120 of that Code.

And compare *Poulos v. New Hampshire, supra*, in which this Court took into consideration an interpretation of the ordinance there attacked made by the state court in a case other than the principal one (345 U. S. 395, 402).

Appeals for the District of Columbia Circuit in *District of Columbia v. Little, supra,* where it was held by the majority that under the Fourth Amendment against unreasonable searches, the defendant-respondent was within her constitutional rights in refusing admittance to her home to a health inspector without a warrant. The chief basis of the decision in *Givner* seems to have been the Maryland court's feeling that the proposed inspection there was not "a search for evidence to prove guilt of a crime" (210 Md. 484, 504), which would admittedly have been abhorrent under either the Fourteenth Amendment or Maryland law, and that the inspection was hence beyond the pale of the protective Amendment.[13] Similar reasoning, *i.e.* that the Fourth Amendment relates only to searches in connection with criminal prosecutions or enforcement of penalties, and does not affect matters such as health department inspections, which are said to be civil, rather than criminal, in nature, seems to have motivated the dissenting opinion in the United States Court of Appeals in *Little, supra.* A ready answer to this proposition, as well as to other arguments in support of the *Givner* rule, is advanced in the comprehensive and well-reasoned majority opinion in *Little* in the United States Court of Appeals:

> "It is said to us that therefore there is no prohibition against searches of private houses by government officers, unless they are searching for evidence of crime; that if they are searching for evidence of crime, they must get a search warrant, but that if they are searching for something else or are just searching, they need not get a search warrant; for searchers of the latter sort, we are told, home owners must open their front doors upon demand of an officer without a warrant.

[13] The Maryland court seemed to have been impressed by the fact that this Court avoided deciding the constitutional question in *Little* (210 Md. 484, 499, 500).

> The argument is wholly without merit, preposterous in fact. The basic premise of the prohibition against searches . . . was the common-law right of a man to privacy in his home, a right which is one of the indispensable ultimate essentials of our concept of civilization. . . . It was not related to crime or to suspicion of crime. It belonged to all men, not merely to criminals, real or suspected. . . . To say that a man suspected of crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity."[14]

And there is no lack of opinion in this Court condemning the invasion of private dwellings by government officials without the intervention of a magistrate or other judicial officer. *Agnello v. United States, supra; Harris v. United States,* 331 U. S. 145; *Davis v. United States,* 328 U. S. 582; *Johnson v. United States,* 333 U. S. 10; *McDonald v. United States,* 335 U. S. 451; *Wolf v. Colorado, supra; Miller v. United States, supra; Jones v. United States,* ..... U. S. ....., 78 S. Ct. 1253, 2 L. ed. 2d 1514.

The constitutional questions herein discussed were fairly raised below, are substantial and important. Their determination will affect large numbers of property owners and others in Baltimore City and elsewhere in municipalities and political subdivisions having comparable health regulations. The only two reported cases in the country which have treated the constitutional problem, *Givner* and *Little,* appear to be directly opposed. It is submitted that the conclusions reached in *Little* by the United States Court of Appeals are supported by the better reason and authorities and that, in part for the same reasons as are therein stated, the Criminal Court of Baltimore, which obviously and

[14] 85 U. S. App. D. C. 242, 245-246.

necessarily followed *Givner*, erred in denying appellant's several motions which sought to resolve the issues in his favor on constitutional grounds and in its verdict. Appellant believes that the problems presented by this appeal — including that of "the appropriate balancing of the liberty of the (people) and the convenience of the (health officers)"[15] — are substantial, are of public importance and merit plenary consideration by this Court.

Respectfully submitted,

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[15] Paraphrasing Lord Simmonds in *Christie v. Leachinsky*, 1 All E. R. 567, 576, as quoted in the dissent of Mr. Justice Frankfurter in *Harris v. United States*, 331 U. S. 145, 170, in regard to the problem of "the appropriate balancing in the words of Lord Simmonds, of 'the liberty of the subject and the convenience of the police'." Words in brackets in the text above are, of course, supplied.

APPENDIX

The judgment below (from the docket entries in the Criminal Court of Baltimore):

Appeal Docket 1958.

January Term.

Number 103.

March 6, 1958—Appeal Certificate from the Northern District of Baltimore City — filed. Traverser tried and found Guilty by Magistrate Henry L. Rogers, on March 6th, 1958 and fined $20.00 and costs $1.70.

Charge—Violation of Section 120 of Article 12 of Baltimore City Code in that a nuisance is suspected at premises 4335 Reisterstown Road, owned by Aaron Frank, consisted of rat infestation, undue trash and debris and said Aaron Frank has refused entry to said premises to said W. H. Gentry.

* * * * * *

March 17, 1958—Verdict: Guilty.

March 17, 1958—Fined $20.00 and costs — Oppenheimer, Judge ($20.00 paid in Northern District).

* * * * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 278

AARON D. FRANK,

Appellant,

vs.

STATE OF MARYLAND,

Appellee.

ON APPEAL FROM THE CRIMINAL COURT OF BALTIMORE (MARYLAND)

MOTION TO AFFIRM

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IN THE

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OCTOBER TERM, 1958

No. 278

AARON D. FRANK,

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vs.

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Appellee.

ON APPEAL FROM THE CRIMINAL COURT OF BALTIMORE (MARYLAND)

MOTION TO AFFIRM

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the judgment and sentence of the Criminal Court of Baltimore be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

OPINION BELOW

Although no opinion was delivered by the Court below, the questions involved have previously been decided by the Maryland Court of Appeals in *Givner v. State*, 210 Md. 484, 124 A. 2d 764.

STATEMENT OF CASE

This is an appeal from the Criminal Court of Baltimore (Maryland) after certiorari had been denied by the Court of Appeals of Maryland. The Appellant was convicted of refusing to allow a health inspector to enter his house in the daytime for the purpose of inspecting his house for a suspected health nuisance and sentenced under Section 120 of Article 12 of the Baltimore City Code (1950 Edition) to pay a fine of Twenty Dollars ($20.00).

ARGUMENT

The judgment and sentence of the Criminal Court of Baltimore is correct in this case in light of the decision of the Maryland Court of Appeals in *Givner v. State*, 210 Md. 484, 124 A. 2d 764. The Appellant was convicted of violating Article 12, Section 120 (Baltimore City Code, 1950 Edition) which reads as follows:

> "Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars."

The Appellant contends that inspections ordered by the above ordinance constitute a violation of his constitutional rights both State and Federal. The General Assembly of Maryland has granted the Mayor and City Council of Baltimore powers as set forth in Section 6 of the Charter of Baltimore City stating that they:

> "* * * shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular; without limitation upon the fore-

going, shall have power by ordinance, or such other method as may be provided for in its Charter * * *:

* * * * * *

"(5) Entry on Private Property

"To enter, by its officers or agents, the land or possessions of any person for the purpose of carrying out the powers enumerated in this Section 6.

* * * * * *

"(11) Health and Nuisances

"To provide for the preservation of the health of all persons within the city; to prevent the introduction of contagious diseases within the city * * *; and to prevent and remove nuisances.

* * * * * *

"(24) Police Power

"To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise said power within said limit; * * *"

The Mayor and City Council of Baltimore, having the power, thus enacted the ordinance involved in the present case. However, no question has been raised as to the power of the municipality to adopt the ordinance here involved, other than the claim that it authorizes unlawful searches.

The issue in this case is whether or not the inspector under the Health Article of the Baltimore City Code was or was not lawfully entitled to enter and inspect the Appellant's residence. The answer, of course, depends upon whether the proposed inspections would infringe any constitutional right of the Appellant under either the Federal or State Constitutions — specifically, the Due Process Clause of the Fourteenth Amendment to the Federal Constitution, or Article 26 of the Declaration of Rights of the Maryland Constitution.

Article 26 of the Maryland Declaration of Rights states:

> "That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted."

The Court of Appeals of Maryland has said that this Article is in *pari materia* with the Fourth Amendment to the Constitution of the United States. *Blum v. State,* 94 Md. 375, 51 A. 26; *Bass v. State,* 182 Md. 496, 35 A. 2d 155; *Johnson v. State,* 193 Md. 136, 66 A. 2d 504.

In *Johnson v. State, supra,* Article 26 was construed as a limitation upon the power of the Legislature to pass any law which would violate that Article. This construction, in practical effect, is in accord with the rule stated by this Court in *Wolf v. Colorado,* 338 U. S. 26, that a State may not affirmatively authorize an unlawful search and seizure without violating the Due Process Clause of the Fourteenth Amendment. The question then is whether the intended searches were unlawful. In *Wolf v. Colorado, supra,* this Court adhered to the doctrine that the Fourteenth Amendment was not "shorthand for the first eight amendments of the Constitution", and does not therefore incorporate them. The opinion of the Court said:

> "This (the Due Process) Clause exacts from the States for the lowliest and most outcast all that is 'implicit in the concept of ordered liberty'."

The opinion went on:

> "The security of one's privacy against arbitrary intrusion by the police — which is at the core of the Fourth Amendment — is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the

Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of the English-speaking peoples.

"Accordingly, we have no hesitation in saying that were a State to affirmatively sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment."

It is, however, clear that prohibitions against unreasonable searches and seizures do not prohibit reasonable searches and seizures. *U. S. v. Rabinowitz,* 339 U. S. 56. Cornelius on *Searches and Seizures,* 2nd Ed., Section 35, states:

"The constitutional provision in question, while primarily designed to protect the individual in the sanctity of his home and in the privacy of his books, papers and property, does not apply to reasonable rules and regulations adopted in the exercise of the police power for the protection of the public health, morals and welfare."

Then he cites some examples of reasonable inspection laws relating to pawnbrokers and food dealers. The inspections of inns or hotels and institutions is upheld. *Hubbell v. Higgins,* 148 Ia. 36, 126 N. W. 914; *Sister Felicitas v. Hartridge,* 148 Ga. 832, 98 S. E. 538.

In *Simms v. Liuzza,* 168 La. 714, 123 So. 301, the Louisiana Court said:

"Plaintiff contests the right of the state fire marshall to order ex parte the demolition of Liuzza's building. In *Zibilich v. Rouseo,* 166 L. 547, 117 So. 586, we said that:

" 'Section 5 of Act No. 26 of 1914 empowers the fire marshall or his authorized representative, upon complaint of any person having an interest in any building or property adjacent, and without any such complaint, to enter into and upon all buildings at all reasonable hours for the purpose of examination, and whenever any building or other structure which, for want of proper repair, or by reason of age and delapidated condition, or for any cause, is especially liable to fire, the said fire marshall or his representative shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of the said building.'

"The fire marshall, therefore was vested with the power under the law to inspect the building in question for the purpose of determining its condition with respect of its liability to fire, and, if he found such to be the fact, to order the owner to demolish the structure."

The Appellant cites and relies upon the case of *District of Columbia v. Little*, 62 A. 2d 874 (Ct. of Mun. App. D.C.) aff. 178 F. 2d 13, 13 A. L. R. 2d 954, 85 U. S. App. D.C. 244, aff. 339 U. S. 1. The Municipal Court of Appeals reversed on constitutional grounds the conviction of Little on a charge that she had interfered with a health officer of the District of Columbia in his duty of inspecting her house.

The facts were that a health officer, in response to a complaint, went to Little's house to investigate. The health officer, who did not have a search warrant, requested Mrs. Little to allow him in her house to inspect the premises. She protested his right to enter her house and refused to unlock the door for him. She neither used nor threatened force of any kind. The Court of Appeals for the District of Columbia affirmed the judgment of the Court of Municipal Appeals by a 2-1 decision, in which both the majority and the minority proceeded entirely on constitutional grounds.

On *certiorari*, a majority of the Supreme Court, in an opinion by Mr. Justice Black, affirmed the judgment of the Court of Appeals on the ground that her "mere refusal to unlock the door accompanied by remonstrances on substantial constitutional grounds was" not "the kind of interference prohibited by the (District of Columbia health) regulations" upon which the prosecution was based. The majority found it unnecessary to consider the constitutional question of whether or not the Fourth Amendment prohibited the health officer from inspecting the premises without a search warrant. Mr. Justice Burton, with whom Mr. Justice Reed agreed, dissented on the factual question and disagreed with the Court of Appeals on the constitutional question. Mr. Justice Burton said in the dissenting opinion:

> "* * * In my opinion, also, the duties which the inspector was seeking to perform, under the authority of the District, were of such a reasonable, general, routine, accepted and important character, in the protection of the public health and safety, that they were being performed lawfully without such a search warrant as is required by the Fourth Amendment to protect the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.
>
> "Accordingly, the conviction of the respondent should be sustained, and the judgment of the United States Court of Appeals affirming the judgment of the Municipal Court of Appeals setting aside that conviction should be reversed."

The majority opinion in the Court of Appeals of the District of Columbia holds that the Fourth Amendment prohibits the search of a home by a health officer of the District without a search warrant. The minority opinion in that Court takes the view that the requirements for

search warrants are applicable only in criminal cases, and that the object of a health department inspection is essentially a civil matter, to which any criminal prosecution is only incidental.

The majority opinion of this Court (at 339 U. S. 2-6) states in part:

> "In this Court the constitutional arguments have extended far beyond the comparatively narrow issues involved in the particular case. At one extreme the District argues that the Fourth Amendment has no application whatever to inspections and investigations made by health officers; that to preserve the public health, officers may without judicial warrants enter premises, public buildings and private residences at any reasonable hour, with or without the owner's consent. At the opposite extreme, it is argued that no sanitary inspection can ever be made by health officers without a search warrant, except with a property owner's consent. Between these two extremes are suggestions that the Fourth Amendment requires search warrants to inspect premises where the object of inspections is to obtain evidence for criminal punishment or where there are conditions imminently dangerous to life and health, but that municipalities and other governing agencies may lawfully provide for general routine inspections at reasonable hours without search warrants. An impressive array of facts is also presented concerning the uniform practices of agencies of local governments to provide for such general routine inspections in connection with sanitation, plumbing, building, etc.
>
> "Neither the facts of this case, nor the District law on which the prosecution rests, provide a basis for a sweeping determination of the Fourth Amendment's application to all these varied types of investigations, inspections and searches. Yet a decision of the constitutional requirement for a search in this particular case might have far reaching and unexpected implications as to closely related questions not now before us. This is therefore an appropriate case in which to apply our

sound general policy against deciding constitutional questions if the record permits final disposition of a cause on non-constitutional grounds. * * *"

It is true that there are many cases to the effect that a search of a home without a search warrant, otherwise than as an incident to a lawful arrest, is unlawful. See *Agnello v. United States*, 269 U. S. 20; *Harris v. United States*, 331 U. S. 145. These cases, however, dealt with criminal prosecutions only and therefore would not be conclusive in this case.

It is the Appellee's position that the exercise of police power in this case was such as was reasonable and necessary to protect the public health, safety and welfare.

The inspection by the health inspectors is in the exercise of the "police power". This was recognized in the majority opinion of the United States Court of Appeals for the District of Columbia in the *Little* case, 85 U. S. App. D. C. 242, 178 F. 2d 13, 13 A. L. R. 2d 954.

There is in the present case an instance of collision between a constitutional provision, the Fourteenth Amendment, and an exercise of the "police power" when used in the sense of that inherent power of the State exercised to preserve the public health.

The Fourteenth Amendment can no more be considered a privilege to conceal upon private premises filth which directly endangers the health of the community, than can the First Amendment be considered a privilege to arise in a crowded theatre and cry "Fire". *Schenck v. United States*, 249 U. S. 47, 39 S. Ct. 247, 63 L. Ed. 470.

In *Nebbia v. New York*, 291 U. S. 502, 524, this Court, in upholding the conviction of a storekeeper for selling milk at a price below that allowed by an order promulgated by

a State board, pursuant to a statutory authority, held respecting the exercise of the police power:

> "* * * Touching the matters committed to it by the Constitution, the United States possesses the power, as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizens to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always on collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.
>
> "The Fifth Amendment in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

In numerous other cases, the Supreme Court has held that the particular constitutional provision invoked either did not apply, or that the police power exercised was a

proper limitation upon the right granted by the constitutional provision. *Mugler v. Kansas,* 123 U. S. 623, 8 S. Ct. 306, 31 L. Ed. 205; *Lawton v. Steele,* 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385; *District of Columbia v. Brooke,* 214 U. S. 138, 29 S. Ct. 560, 53 L. Ed. 941; *Calhoun v. Massie,* 253 U. S. 170, 40 S. Ct. 474, 64 L. Ed. 834; *Queenside Hills Realty Co. v. Saxl,* 328 U. S. 80, 66 S. Ct. 850, 90 L. Ed. 1096.

No one doubts the validity of protecting the right of privacy. It is not a right, however, which is inviolate in modern living. There are assaults upon our privacy every day of our lives; the gas man who enters to read the meter, the water assessor who counts the faucets and checks leakages. These are all assaults upon our privacy which we accept as part of the price of living in a complex society. To say that we will accept these invasions, but can bar the entry of inspectors who enter for the purpose of protecting the public health, is to fail to balance the conflicting rights in accordance with their relative weight. The entrance of the health inspector in the case at bar was for the protection of the homeowner as well as the rest of the community.

No exercise of a private right can be imagined which will not in some respect, however slight, affect the public. The Fourteenth Amendment, as respects State action, does not prohibit governmental regulation for public welfare; it merely conditions the exercise of the power by requiring that governmental regulation be consistent with due process. The guarantee of due process demands, in general terms, that the legislation be reasonable in the light of existing facts. In determining this reasonableness the court must evaluate the relative weights of the beneficial consequences which will follow, and the price which must be paid for them in the form of the resulting deprivation of liberty or freedom.

The duties of the Health Department to protect public health hardly require any reference but it may be worth mentioning the preamble to Ordinance No. 1543, which was passed by the Baltimore City Council (1950-1951) establishing the Housing Bureau of the Health Department. This preamble reads as follows:

"Whereas, a major objective of the Mayor and City Council of Baltimore is to combat successfully slum and blighted areas and prevent their future growth and

"Whereas, experience in the City of Baltimore has demonstrated that slum and blighted areas result in large measure from improper maintenance of dwellings, inadequate sanitation, over-crowding of dwellings and general community neglect in these areas and

"Whereas, experience has also shown that through well-planned and vigorous enforcement of minimum housing standards for safety, sanitation, population density and public health, these conditions can be relieved and prevented and

"Whereas, there has been developed in the City of Baltimore a municipal effort, known as 'The Baltimore Plan', for combating residential blight by vigorous housing law enforcement, which program requires for its maximum effectiveness:

(a) Aggressive enforcement of housing ordinances and regulations through the efforts of several of the departments of the City and the utilization of their several enforcement procedures.

(b) Compelling compliance with said ordinances and regulations both in response to complaints and also at the initiative of the City on an area basis.

(c) Centralization in a single office of responsibility for assisting the several city departments involved in housing law enforcement in establishing policies, procedures and techniques which will assure uniform and consistent enforcement, and also for assisting these departments in planning

their separate programs to avoid duplications, overlaps and conflicts, and to integrate the housing law enforcement effort with the programs of the Housing Authority of Baltimore City and the Baltimore Redevelopment Commission into an effective campaign against slum and blighted areas and

"Whereas, the Board of Estimates, prior to the adoption of this ordinance, has recommended the creation of an additional bureau in the Department of Health, to be known as the Housing Bureau, in order to meet the requirements of 'The Baltimore Plan' program hereinbefore recited * * *."

The attempted inspection of Mr. Frank's property was in response to a complaint which had been registered as to the presence of rats in the neighborhood. The inspector viewed the yard and exterior of Frank's house and he testified he saw trash, rodent feces and undue debris. This, we believe, would be sufficient to satisfy the requirements of Section 120 of Article 12 of the Baltimore City Code as to cause one to suspect the existence of a nuisance in the Frank house. The Health Inspector, after viewing this property, had cause to suspect that a nuisance existed and it was then necessary to inspect the premises so that steps could be taken to avert such a nuisance.

The Court of Appeals of Maryland, in *Givner v. State*, 210 Md. 484, said:

"We also note that all of the inspections authorized by the ordinances here involved are to be made at reasonable hours. There is no suggestion that any of the inspections was to be used as a cover to conduct a search for any violations of the criminal law or for any purpose other than the preservation of health and safety. There is no suggestion of harassment by repeated inspections.

"Where there is reason to believe that a crime is being committed, but the circumstances are not such

as to warrant an immediate arrest, and there is ample time to get a search warrant, the proper practice is to apply for such a warrant to be issued under Code (1951), Article 27, Section 328, *Johnson v. State*, 193 Md. 136, 66 A. 2d 504. This would also be sound practice if there were any occasion for a more extended search than that which might be authorized as an incident to a lawful arrest without warrant. The statute just referred to is framed with a view to the detection of crime; and, as was suggested in *Givner v. Cohen, supra*, and in *Gattus v. State*, 204 Md. 589, 105 A. 2d 661, there is serious doubt as to whether a search warrant is obtainable except under a statute or to search for stolen goods or the like. This, of itself, would not prove that a search warrant is unnecessary, but it does tend to support the rather restricted common law concept of the office of a search warrant which, we think, was in mind at the time of the adoption of both our State and Federal constitutional provisions with regard to searches and seizures and search warrants. See *Gattus v. State*, just cited."

As was stated previously, the problem here is one of personal privacy as against the protection of the public health. True, the privacy of the home of an individual is invaded whatever may be the reason for the search, but in the one case the liberty of the individual is at stake, and in the other, the health of the public. The latter is the objective of the inspection in the present case. In the usual course of procedure, if violations of the health code are found, the property owner is informed of the violations and is ordered to correct them within a stated period. If he fails to comply with such order, a prosecution is instituted for failure to do so.

This Court said in *United States v. Rabinowitz*, 339 U. S. 56 at page 63:

"What is a reasonable search is not to be determined by any fixed formula. The Constitution does not de-

fine what are 'unreasonable' searches and, regrettably, in our discipline we have no ready litmus-paper test. The recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case."

The difficulty of establishing an absolute criteria to determine the reasonableness of a search is shown in that case. However, here, from the circumstances of the case, we submit that the proposed inspection was reasonable.

As was said in the case of *Givner v. State*, 210 Md. 484 by the Court of Appeals of Maryland:

"We believe that on its facts, on the basis of the ordinances involved and in the light of the established practices as to the enforcement of such ordinances in Baltimore, this case falls in the zone between the extreme of constitutional arguments which are stated in the *Little Case*. We have a legislative finding of facts embodied in the preamble to Ordinance No. 1543 that interdepartmental inspection and enforcement of minimum housing standards for safety, sanitation and public health are needed to combat urban blight and the growth of slum conditions, we have the results of actual inspections in the same general area made shortly before the attempted inspection of the appellant's home and we have the fact that these inspections are of a routine nature, are to be made at reasonable hours and are primarily for protective, not punitive purposes. In these circumstances, we consider the proposed inspections reasonable, and in our opinion the case falls within one of the intermediate constitutional contentions stated in the *Little Case* under which 'municipalities and other governing agencies may lawfully provide for general routine inspections at reasonable hours without search warrants'. We hold that such inspections are not unreasonable and hence are not unlawful."

CONCLUSION

It is respectfully submitted that the judgment and sentence of the Criminal Court of Baltimore should be affirmed on the ground that the inspector was trying to perform a duty which was of such a reasonable, general, routine and important character in the protection of public health that such an inspection, without a search warrant, would not violate the Fourteenth Amendment.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 278

AARON D. FRANK,

Appellant,

vs.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CRIMINAL COURT OF BALTIMORE,
STATE OF MARYLAND

BRIEF FOR THE APPELLANT

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IN THE

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No. 278

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vs.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CRIMINAL COURT OF BALTIMORE, STATE OF MARYLAND

BRIEF FOR THE APPELLANT

OPINIONS BELOW

No opinion was delivered in any of the courts below.[1]

JURISDICTION

The jurisdiction of this Court rests on 28 U.S.C. 1257(2), since the validity of a state statute, in this instance an ordinance of the Mayor and City Council of Baltimore, Maryland, is drawn in question on grounds of its repugnancy, both on its face and as construed and applied, to the Fourth, and to the Due Process Clause of the Fourteenth, Amend-

[1] But see *Givner v. State of Maryland*, 210 Md. 484, and note 6, *infra*, page 8.

ments to the Constitution of the United States and the decision below is in favor of the validity of the ordinance. The judgment and sentence of the Criminal Court of Baltimore, which are sought to be reviewed, were entered on March 17, 1958 (R. 2, 26, 42). On March 22, 1958, appellant applied to the Court of Appeals of Maryland, the state's court of last resort, for certiorari[2] to review that judgment (R. 43, 44). That court denied certiorari on April 25, 1958 (R. 43). The notice of appeal to this Court was filed in the Criminal Court of Baltimore on June 16, 1958 (R. 2). The transcript of record and jurisdictional statement were filed in this Court on August 15, 1958. This Court noted probable jurisdiction on October 20, 1958 (R. 45).

CONSTITUTIONAL PROVISIONS AND ORDINANCE INVOLVED

The Fourth Amendment to the Constitution of the United States provides (1 U.S.C., 1952 Edition, XLIV):

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

The Fourteenth Amendment to the Constitution of the United States provides, in part (1 U.S.C., 1952 Edition, XLV):

---

[2] His petition was necessarily addressed to that court's discretionary jurisdiction. Annotated Code of Maryland (1957), Article 5, Section 21. The instant case originated before one of the station house magistrates of Baltimore City (R. 1-3) and was heard in the Criminal Court of Baltimore on appeal from the magistrate's decision (R. 4). Appellant had no further appeal, or means of review as of right, from his conviction by the Criminal Court of Baltimore. See note 4, *infra*, page 5.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Baltimore City Code (1950 Edition), Article 12, Section 120, provided on the dates involved in this case and now provides (Page 56 (fol. 106) of pamphlet opposite R. 36):

"120. Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars."

QUESTIONS PRESENTED

1. Can a health officer of Baltimore City enter and inspect a private home without a search warrant if the owner or occupier objects?

2. Did the Criminal Court of Baltimore (Part II) err in sustaining the validity of Baltimore City Code (1950 Edition), Article 12, Section 120, and of the proposed inspection of appellant's private dwelling house for an alleged nuisance consisting of alleged rat infestation, undue trash and debris, sought to be made thereunder in the day time without a search warrant by a sanitarian of the Baltimore City Health Department, against appellant's objections that said Section 120 was repugnant to the Fourth and Fourteenth Amendments to the Constitution of the United States and subjected him to, and the proposed inspection constituted, an unreasonable and illegal search of his house, a wrongful

trespass upon his property and a wrongful taking thereof, all without due process of law and in violation of his constitutional rights under the Fourth and Fourteenth Amendments to the Constitution of the United States?

3. Did the Criminal Court of Baltimore (Part II) err in denying appellant's "Motion to Dismiss" and his "Motion for a Verdict of 'Not Guilty'" and in convicting him of violating said Section 120?

STATEMENT

The Mayor and City Council of Baltimore, exercising within the limits of that city all the police power of the State of Maryland (R. 40),[3] enacted an ordinance empowering its health officers who shall have cause to suspect that a nuisance exists in any house to demand entry therein in the day time and providing that an owner or occupier who shall refuse or delay to open his house and admit a free examination shall forfeit and pay for every such refusal or delay the sum of twenty dollars (Page 56 (fol. 106) of pamphlet opposite R. 36). Appellant refused to open his house and admit an examination thereof by a Health Department sanitarian who demanded entry (R. 9) in the day time, without a search warrant (R. 19), to inspect for an alleged suspected nuisance (R. 9, 14, 17). After trials in the appropriate state courts of Maryland, appellant was finally convicted of violating the ordinance (R. 1, 26, 43) and he appeals, urging, as he did below, that his conviction

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[3] Charter and Public Local Laws of Baltimore City (Flack's 1949 Edition), Section 6, paragraph (24). See also, for further delegations to the City of Baltimore of powers pertinent to the instant cause, paragraphs (1) (power to regulate use and maintenance of buildings and structures of every kind), (5) (power to enter the land or possessions of any person to carry out the powers enumerated in Section 6) and (11) (power to preserve the public health and to prevent and remove nuisances) (R. 38-39).

resulted from his rightful refusal to submit to an unreasonable and illegal search of his home, sought to be made under the ordinance in violation of the Fourth Amendment and without that due process of law assured him by the Fourteenth Amendment to the Constitution of the United States.

Testimony given in the Criminal Court of Baltimore (at appellant's trial[4] on appeal from his conviction by the police magistrate before whom the prosecution was initiated) established the following principal facts:

On February 27, 1958 (R. 6), in the day time, Sanitarian Gentry, an officer of the Bureau of Rodent Control of the Baltimore City Health Department (R. 12), acting on a complaint of rats in the basement of a neighboring house (R. 6, 7, 12), went to appellant's private dwelling house in 4335 Reisterstown Road in the City of Baltimore, Maryland to make an inspection of the premises (R. 6, 7, 9, 11, 20). The sanitarian did not have a search warrant (R. 19).

Appellant's house is a detached frame structure, situated on a lot having a frontage of fifty feet and a depth of one hundred thirty-seven feet (R. 15; and see photographs, State's unnumbered exhibits, opposite R. 29-35). The complaining neighbor resided in 4319 Reisterstown Road, about eight houses, or approximately three hundred feet, removed from appellant's house (R. 13).

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[4] The trial was *de novo*, in accordance with the local practice. The Criminal Court of Baltimore, regularly a *nisi prius* tribunal, sat here in the exercise of its special, appellate jurisdiction to hear appeals from judgments in criminal causes determined by the several justices of the peace assigned to police stations in Baltimore City. Charter and Public Local Laws of Baltimore City (1949 Edition), Section 411; Laws of Maryland, 1953, Chapter 676; Annotated Code of Maryland (1951 Edition), Article 5, Section 94; 40 Opinions of the Attorney General of Maryland (1955) 641; Laws of Maryland, 1957, Chapter 399, Section 4; Annotated Code of Maryland (1957 Supplement), Article 5, Section 30; *Brack v. State*, 187 Md. 542.

As a prelude to his examination, the sanitarian knocked on the door of appellant's house, but got no response. He then proceeded to inspect the outside of the premises (R. 7). After examining the yard and the exterior of the house (R. 7, 8) and, *inter alia*, noting that "The condition of the house was an extreme state of decay" (R. 9) and observing "debris and trash" (R. 9), and "a pile, later identified as rodent feces mixed with straw and trash and debris to approximately half a ton" (R. 9) in the yard, the sanitarian felt that he had cause to suspect the existence of a nuisance, consisting of rat infestation, trash and undue debris, *inside* appellant's house (R. 1, 3, 5, 6, 9, 13, 17, 19). He did not see any rats on the premises (R. 18), nor did he identify what species of rodent had deposited the feces (R. 9, 16, 17), although he received information, while on the premises, which, he testified, "led me to believe it was rodent feces, probably chinchilla. The defendant told me (fol. 16) he had been raising chinchillas but some children had stolen them" (R. 9). He did not observe the interior of the house (R. 11, 12).

While the sanitarian was engaged in his outside examination, appellant emerged from his house and spoke with the health officer in the yard (R. 9, 10, 19). He asked what the sanitarian was doing on the property (R. 9). The sanitarian identified himself, informed appellant of his suspicions and demanded entry to the house to inspect the basement area for rats (R. 9, 10). Appellant refused to admit the sanitarian (R. 9) without a warrant, telling him that "'you will have to get a search warrant if you want to get in this house'" (R. 19). The sanitarian did not enter the house (R. 11, 12, 13).

On the next day, February 28, 1958, Sanitarian Gentry returned to appellant's house, accompanied by two police

officers (R. 10, 11, 21) (He testified that he "wanted some witnesses" (R. 21).), but did not find anyone at home (R. 11, 21). He inspected the outside of the premises again (R. 11, 21). He did not observe the interior of the house (R. 11, 21). He then appeared before Magistrate Levin, one of the police station magistrates of Baltimore City, and swore out a warrant for appellant's arrest (R. 22) for violation of Baltimore City Code (1950 Edition), Article 12, Section 120, in that a nuisance, consisting of rat infestation, undue trash and debris, was suspected in appellant's house and appellant had refused him entry thereto on February 27, 1958 (R. 1, 3, 5, 11, 17, 24, 25). On March 5, 1958, appellant was arrested, while sitting in his automobile parked on the street, by a police officer acting under the warrant (R. 24).

On March 6, 1958, appellant was tried on the charge laid in the warrant before Magistrate Rogers, one of the justices of the peace of Baltimore City assigned to the police stations thereof, in Northern District Police Station Magistrate's Court. The magistrate found him guilty of violating Section 120 and imposed a fine of $20.00 and costs (R. 1-3). Appellant forthwith, on the same day, entered an appeal (R. 4).

On March 7, 1958, while the appeal was pending, Sanitarian Gentry again went to appellant's house and took pictures of the outside of the house and of the grounds (R. 8). Eight photographs taken by him on that day were introduced in evidence by the State during appellant's trial, on his appeal, in the Criminal Court of Baltimore (Part II) on March 17, 1958 (State's unnumbered exhibits; R. 8, 29-35).

In all the courts below, appellant attacked both Section 120, on which the prosecution rested, and the inspection

sought to be made thereunder on the grounds that the Section subjected him to, and the proposed inspection constituted, an unreasonable and unlawful search of his house, as well as a wrongful trespass upon and taking of his property, all without due process of law and in violation of his constitutional rights under the Fourth and Fourteenth Amendments (R. 2, 5, 6, 23, 26, 27-28, 40-41). In the Criminal Court of Baltimore, before pleading to the charge[5] against him, he moved to dismiss it on constitutional grounds (R. 5, 27-28). At the end of the State's case he moved for a verdict of "not guilty", chiefly on constitutional grounds (R. 23, 40-41). At the close of the entire case he renewed both motions. But the court rejected his contentions, denied his several motions, entered a verdict of guilty and imposed a fine of $20.00 and costs (R. 2, 26, 28, 41, 42). From that judgment and sentence this appeal is brought here.[6]

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[5] There was no indictment nor any information filed in the Criminal Court of Baltimore (R. 5). Appellant was simply tried on the papers transmitted by the magistrate, as is the practice in Baltimore City. He makes no issue of this procedure.

[6] While no opinions were delivered below, it is noteworthy that the Court of Appeals of Maryland, the state's highest tribunal, had, in a quite similar earlier case, carefully considered the specific questions here involved, *i.e.*, the validity of Section 120 and the legality of an inspection sought to be made thereunder by a Health Department officer without a warrant as against the Fourth and Fourteenth Amendments, and had fully expressed itself in support of the validity and constitutionality of the ordinance. *Givner v. State of Maryland* (1956), 210 Md. 484.

In *Givner*, representatives of the Commissioner of Health, the Building Inspection Engineer and the Fire Department, an electrical inspector and a uniformed policeman requested permission to enter defendant-appellant's apartment to make inspections and were refused entry. Defendant was then indicted and convicted for violating the provisions of the Baltimore City Code, the first count charged violation of Article 12, Section 120 of that Code.

The rule of *Givner* was of course binding on the trial magistrate and on the Criminal Court of Baltimore.

SUMMARY OF ARGUMENT

A health officer of Baltimore City cannot lawfully enter and inspect a private home for a suspected nuisance without a search warrant if the owner or occupier objects. The Baltimore City Health Code provision purporting to permit such arbitrary invasion of the right of privacy infringes the guaranties of the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment and is void.

Whether or not the Fourth Amendment directly affects activities of state health officers, its essential protection against invasion of the individual's privacy is enforceable through the Due Process Clause to invalidate such incursions into privacy by the state. *Wolf v. Colorado*, 338 U.S. 25. Accordingly, the intended search of appellant's private dwelling without a warrant invaded his "right to be let alone", offended constitutional guaranties and was unlawful.

The Health Code provision which purports to permit such a search imposes criminal punishment on appellant for nothing more than mere refusal to admit a health officer to inspect the sanitary conditions of his house, accompanied by remonstrances on substantial constitutional grounds. It invades the right of privacy in the home and is therefore invalid. *District of Columbia v. Little*, 339 U.S. 1.

The argument that the intended inspection was exempt from the effect of constitutional safeguards because not conducted in connection with criminal prosecutions or enforcement of penalties is entirely untenable. The ultimate outcome of proceedings initiated by such inspection may well be criminal punishment and evidence obtained during the inspection may be used to secure criminal convictions for violation of Health Code provisions. Even if the proposed inspection is treated as one connected with civil,

rather than criminal, proceedings, it is still such a search as falls within the scope and prohibitions of the protective Amendments. The argument that the Amendments require an officer who is searching for evidence of crime to have a search warrant, but permit one who is just searching to do so without a warrant is absurd. The common law right to protection of one's privacy preceded the Fourth Amendment and is not related to crime or suspicion of crime. A man suspected of crime certainly has no better right to protection in his home from search without a warrant than a man who is not suspected of crime. *District of Columbia v. Little*, 85 App. D.C. 242. And the Fourth Amendment has application to civil searches as well. *Federal Trade Commission v. American Tobacco Co.*, 264 U.S. 298.

The intended search of appellant's home without a warrant was unreasonable and cannot be justified. There was no emergency relieving from the necessity to obtain a search warrant. The health officer had ample time to apply for a warrant. Protection of the public health does not require any greater encroachment upon civil liberty than does enforcement of the criminal laws or fire prevention laws, neither of which envision, or would in the circumstances of the instant case condone, arbitrary invasion of a private home without a warrant. And the Baltimore City Health Code itself provides for obtention of warrants in connection with conditions (contagious diseases) much more dangerous to public health than the condition (rat infestation) here sought to be made the basis for search without a warrant.

The ordinance for violation of which appellant was convicted permits a health enforcement officer himself to determine, without intervention of a judicial officer, whether a search should be made, and to do so on mere suspicion

alone. It denies appellant that minimal procedural due process which constitutional safeguards secure to him and is therefore void. The lower court erred in failing to recognize the invalidity of the ordinance and in convicting appellant for his rightful refusal to submit to the unlawful search which it condoned.

ARGUMENT

1. A HEALTH OFFICER OF BALTIMORE CITY CANNOT LAWFULLY ENTER AND INSPECT A PRIVATE HOME WITHOUT A SEARCH WARRANT IF THE OWNER OR OCCUPIER OBJECTS. THE PROVISION OF THE BALTIMORE CITY HEALTH CODE (ARTICLE 12, SECTION 120) PURPORTING TO PERMIT INVASION OF APPELLANT'S HOME WITHOUT A WARRANT BY A HEALTH OFFICER HAVING CAUSE TO SUSPECT EXISTENCE OF A NUISANCE IN THE HOUSE IS VOID FOR REPUGNANCE TO THE PROHIBITION AGAINST UNREASONABLE SEARCHES OF THE FOURTH AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. THE PROPOSED EXAMINATION OF APPELLANT'S RESIDENCE, SOUGHT TO BE MADE WITHOUT A WARRANT UNDER AUTHORITY OF THE ORDINANCE, WAS AN UNWARRANTED ATTEMPT TO CARRY OUT AN ARBITRARY, UNJUSTIFIABLE AND UNLAWFUL INVASION OF APPELLANT'S PRIVACY, WHICH HE RIGHTFULLY RESISTED BY REFUSING ENTRY TO THE HEALTH OFFICER IN THE ABSENCE OF A SEARCH WARRANT.

This cause arises from impingement of an attempted exercise by an agency of the State of its police power respecting protection of the public health upon one of the fundamental tenets of individual liberty, protected by federal constitutional guaranties, the right to be secure in the privacy of one's home from arbitrary intrusion by government officials without search or other proper warrants. Appellant submits that the health code provision (Baltimore City Code (1950), Article 12, Section 120), upon which his prosecution rested, permits, and the proposed search

(inspection) of his house sought to be made thereunder represented, just such an arbitrary, unwarranted and unlawful invasion of his privacy.

A. Whether Measured Against the Guaranties of the Fourth Amendment or the Due Process Clause of the Fourteenth Amendment, the Intended Search of Appellant's House Without a Warrant Was Unlawful.

Aside from the question whether the Fourth Amendment should be given effect against the State in the circumstances of the instant cause,[7] it now seems settled that protection

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[7] While the issue may by many be considered closed, respectable opinion exists to the contrary. See dissenting opinion of Mr. Justice Black in *Adamson v. California*, 332 U.S. 46, 68, and opinion in *Wolf v. Colorado*, 338 U.S. 25, of Mr. Justice Black (338 U.S. 25, 40), concurring, and Mr. Justice Rutledge (338 U.S. 25, 47), dissenting. Good authority supports the view "that Congress, the House and the Senate, had the following objects and motives in view for submitting the first section of the Fourteenth Amendment to the States for ratification: "1. To make the Bill of Rights (the first eight amendments) binding upon, or applicable to, the States. . . ." See Flack, *The Adoption of the Fourteenth Amendment* (1908) 94, referred to in dissent of Mr. Justice Black in *Adamson v. California*, 332 U.S. 46, 72n. And see also the comprehensive Appendix to the dissenting opinion collecting pertinent excerpts from Congressional and other records of proceedings leading to promulgation and adoption of the Amendment. *Id.*, at pages 92-123. The dissent urges that, on the question of application *vel non* of the Bill of Rights to the States through the Fourteenth Amendment, this Court has consistently avoided employing the respected practice of interpreting legislative enactments in accordance with the intent of their framers and has ignored the clear evidence of that intent present in the sources referred to in the Appendix to the dissenting opinion, 332 U.S. 46, 72, 92-123.

Appellant suggests that the instant case is an appropriate one in which to implement the doctrine of the dissent and, at the same time, to further the principle that the Due Process Clause "exacts from the States for the lowliest and most outcast all that is 'implicit in the concept of ordered liberty'", announced in *Palko v. Connecticut*, 302 U.S. 319, and applied to the protection "which is at the core of the Fourth Amendment" in *Wolf v. Colorado*, 338 U.S. 25, by directly applying the prohibition of the Fourth Amendment to invalidate the health code provision and intended search here in issue.

of the security of one's privacy against arbitrary intrusion by government officers is among those guaranties basic to our free society, implicit in "the concept of ordered liberty", enforceable against the states through the Due Process Clause. *Wolf v. Colorado*, 338 U.S. 25; *Palko v. Connecticut*, 302 U.S. 319.

In *Wolf v. Colorado*, 338 U.S. 25, 27, 28 (1949), in dealing with the question whether a conviction in a State court violated the Due Process Clause because evidence admitted at the trial would have been excluded in a federal prosecution because obtained in a manner offending the Fourth Amendment, this Court said:

> "The security of one's privacy against arbitrary intrusion by the police — which is at the core of the Fourth Amendment — is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and basic constitutional documents of English-speaking peoples.
>
> "Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment."

If one were to read "health officers" in the place of "police", the Court's statement would seem to apply with no less vigor to the instant case. Certainly the search here was sought to be made solely on the authority and convenience[8]

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[8] The sanitarian testified on this point as follows (R. 20):

"Q. . . . Could you not just as well have made your inspection one hour or two hours later than at the time you demanded entry?

of the sanitarian and was affirmatively sanctioned by the State in the ordinance.

B. THE ATTEMPTED SEARCH OF APPELLANT'S DWELLING WITHOUT A WARRANT WAS IN ITSELF UNREASONABLE AND INFRINGED HIS "RIGHT TO BE LET ALONE".

This Court has said that, "While the question has never been directly decided by this court, it has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein". *Agnello v. United States*, 269 U.S. 20, 32. And, "The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws". *Id.*

More than two decades ago, in discussing the efficacy of the Fourth and Fifth Amendments to protect against wiretapping by federal officers, Mr. Justice Brandeis, dissenting in *Olmstead v. United States* (1928), 277 U.S. 438, 478, said:

> "The protection guaranteed by the amendments is is much broader in scope. . . . They conferred, as against the government, the right to be let alone — the most comprehensive of the rights and the right most valued by civilized men. To protect that right every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."

As recently as *Miller v. United States*, 357 U.S. 301, 78 S. Ct. 1190, 1195, 2 L. ed. 2d 1332, 1337 (decided June 23, 1958), this Court saw fit to emphasize the sanctity of "the precious interest of privacy summed up in the ancient adage that a man's house is his castle", quoting the remarks on that principle attributed to the Earl of Chatham:

A. I could not. I had two students I had to release at three o'clock. I have to be in the office at three thirty every day to take care of my reports."

> "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter — all his force dares not cross the threshold of the ruined tenement!"

Appellant was well within his constitutional rights in refusing admittance to his home to the health officer who had no warrant. He rightfully refused to comply with an ordinance purporting to authorize an unlawful search of his house. *Little v. District of Columbia* (D.C. Mun. App.), 62 A. 2d 874; *District of Columbia v. Little*, 85 U.S. App. D.C. 242, 13 A.L.R. 2d 954 (1949), affirmed on other grounds 339 U.S. 1. The instant cause requires resolution of constitutional issues quite similar to those presented to this Court in *Little*.

C. Section 120 Imposes Criminal Punishment for Appellant's Mere Refusal, on Constitutional Grounds, to Admit a Health Officer Without a Warrant and is Therefore Invalid.

Little appears to be the only case heretofore brought to this Court directly presenting the particular conflict here involved between the essential safeguards against unreasonable searches afforded the individual by federal constitutional guaranties and the necessary exercise of its police power by the government (of the state or other political sub-division) to protect the public health.[9] In

[9] Elsewhere, four jurisdictions appear to have treated, or discussed, the same problem, or a similar one arising under state constitutional provisions. These are the District of Columbia (*Little v. District of Columbia*, 64 A. 2d 874 (1948) and *District of Columbia v. Little*, 85 App. D.C. 242 (1949), holding that the Fourth Amendment prohibits entry of federal health officer without a warrant against occupant's consent); Maryland (*Givner v. State*, 210 Md. 484 (1956), holding that neither the Fourth nor the Fourteenth Amendment in-

Little, 339 U.S. 1, the defendant-respondent had been convicted in the trial court of interference with a health officer of the District of Columbia by locking the door to her home, refusing the officer admittance and protesting her constitutional right to be secure from his search or inspection in the absence of a warrant.[10] Two intermediate reviewing courts[11] found the conviction erroneous, on the constitutional ground that "the Fourth Amendment's prohibition against unreasonable searches and seizures forbade the health officer to enter respondent's private home without a search warrant" (339 U.S. 1, 2) and this Court granted certiorari upon application of the District.

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validates such entries by state health officers); South Carolina (*Richards v. City of Columbia* (1955), 227 S.C. 538, 556, containing a dictum only stating that there is doubt whether constitutional guaranties against unreasonable searches are applicable to entries by officers enforcing housing code); and Ohio (*State v. Price* (1958), 168 Ohio St. 123, 151 N.E. 2d 523, holding that such entries under a housing code do not offend the pertinent provision of the Ohio constitution, which is said to be comparable to the Fourth Amendment). The opinion of the Ohio court expressly excludes consideration of any federal constitutional question. 151 N.E. 2d 523, 525. The case does not appear to add anything to the existing state of the law, but seems simply to adopt the *Givner* result as being the most worthy of support. The Ohio opinion does not, however, consider the Fourteenth Amendment's effect on the problem. It should be noted that both the Maryland court in *Givner* (210 Md. 484, 499, 500) and the Ohio court in *Price* (151 N.E. 2d 523, 528-529) seem to have been impressed and influenced by the fact that this Court avoided deciding the constitutional question in *Little*.

[10] While *Little* arose directly under the Fourth Amendment, that dissimilarity between it and the instant case would seem to be obviated by the holding in *Wolf v. Colorado*, 338 U.S. 25, that the Fourth Amendment's prohibition against unreasonable searches, or, at least, a commensurate protection, "which is at the core of the Fourth Amendment" (338 U.S. 25, 27, 28) and hence, by a sensible analogy, equivalent to that prohibition and comparable in scope, is enforceable against the States.

[11] The Municipal Court of Appeals for the District of Columbia (*Little v. District of Columbia*, 62 A. 2d 874) and the U. S. Court of Appeals for the District of Columbia Circuit (*District of Columbia v. Little*, 85 U.S. App. D.C. 242).

Of course, in *Little*, this Court declined to decide the proffered constitutional questions, applying instead its policy to dispose of a cause on non-constitutional grounds where the record permits. It disposed of the case by determining an interpretative question, with which the lower courts had not dealt, and holding that respondent's statements and actions did not constitute "interference" with the health officer within the meaning of the pertinent statutes and regulations of the District. 339 U.S. 1, 4. But, in doing so, this Court condemned enactments which, like Section 120 in the instant cause, seek to impose criminal penalties for mere refusal, on constitutional grounds, to submit to an examination of one's home by a health officer without a warrant. This Court clearly and succinctly expressed that sentiment in its statement of the reason for the ruling which it made on interpretative question (339 U.S. 1, 7):

> "The right to privacy in the home holds too high a place in our system of laws to justify a statutory interpretation that would impose a criminal punishment on one who does nothing more than respondent did here."

What "respondent did here", in *Little*, was to tell "the health officer, who had no search warrant, not to enter her home to inspect its sanitary condition; she had also refused to unlock her door" (339 U.S. 1, 2), a "mere refusal to unlock the door accompanied by remonstrances on substantial constitutional grounds" (339 U.S. 1, 5-6). And her activities in that regard could scarcely be considered censurable; they were, indeed, necessary, for "Had the respondent not objected to the officer's entry of her house without a search warrant, she might thereby have waived her constitutional objections" (339 U.S. 1, 7).

The logical inference would seem to be that, absent the saving construction which this Court placed upon the provisions of the District regulation prohibiting interference with its health officers, that regulations would run counter to the Fourth Amendment, as condoning unreasonable searches, and would be invalid.

If the District regulation examined in *Little* was objectionable unless so construed as to avoid imposition of criminal punishment for mere refusal to submit to a health officer's inspection in the absence of a warrant, how much more reprehensible is the instant Baltimore City health code provision, which, by its express terms, proposes to do exactly that which this Court condemned by its reasoning in *Little!* There is neither need nor room for any "interpretative question" in order to reach the plain and patent meaning of the clear and explicit language of Section 120. That section, without any doubt, imposes a "criminal punishment" (339 U.S. 1, 7), in the form of a forfeit or fine of twenty dollars, for doing "nothing more than respondent did" (*Id.*) in *Little*, indeed, for doing less, since one need not even refuse to open his house, as defendant-respondent did in *Little*, but only "*delay* to open the same and admit a free examination" (Page 56 (fol. 106) of pamphlet opposite R. 36; emphasis supplied) to be subject to punishment under Section 120.

Existence of the ordinance poses no small dilemma for the conscientious citizen since, under its terms, reliance on constitutional objections to a proposed search without a warrant, which might be waived if not made (*Little Case*, 339 U.S. 1, 7), might also very readily result in the objector's prompt arrest, as was the immediate sequel, in the instant cause, to appellant's refusal to comply with the ordinance (R. 11, 22, 24-26). Let a householder of Baltimore City but have the temerity to answer a health officer's

demand for entry with a request first to see a search warrant and he risks being taken up by the police and subjected to prosecution in the state's criminal courts, as was appellant. If the forfeit or fine fixed by the ordinance should not be paid forthwith, then one foolhardy enough to oppose the bar of the United States Constitution to a health officer's demand for entry, based only on his own determination that cause exists to suspect a nuisance, might very well find himself exposed to imprisonment for his pains (R. 3)!

To open an area of civil liberty as broad, sensitive, precious and important as "the right to be let alone" in the privacy of the home itself to invasion in the sole discretion of government enforcement officials, whose activities are curbed only by the *subjective* requirement that they first find that cause exists for mere *suspicion* of a nuisance (presumably limited to nuisances cognizable under the health code) is to subvert not only those concepts of human rights which are said to be "enshrined in the history and basic constitutional documents of English-speaking peoples" (*Wolf v. Colorado*, 338 U.S. 25, 27, 28), but every reasonable notion of fair play or due process as well. This Court's reasoning in *Little*, evidenced by the language quoted (*supra*, page 17), should alone suffice to resolve the constitutional issues in this case in appellant's favor.

D. The Intended Examination of Appellant's Home Without a Warrant was a Search Connected With a Criminal Prosecution, but Whether or not it is so Considered, it was Still Such a Search as Falls Within the Scope and Prohibition of the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment.

A principal reliance of proponents of health code inspections without warrants seems to be their contention that

such examinations are exempt from the effect of constitutional guaranties because not conducted in connection with criminal prosecutions or enforcement of penalties. Accordingly, a chief basis of the decision in *Givner*, on which the State relies heavily in the instant case, seems to have been the Maryland court's feeling that the proposed inspection there was not "a search for evidence to prove guilt of a crime" (210 Md. 484, 504),[12] which would admittedly have been abhorrent under either the Fourteenth Amendment or Maryland law, and that the inspection hence was beyond the pale of the protective Amendment. Similar reasoning, *i.e.* that the Fourth Amendment "relates only to searches and seizures in connection with criminal prosecutions or enforcement of penalties" (85 U.S. App. D.C. 242, 254), and does not affect matters such as health department inspections, which are said to be other than criminal in nature, seems to have motivated the dissenting opinion in the United States Court of Appeals in *Little*, 85 U.S. App. D.C. 242, 254. An apt answer to this proposition is advanced in the comprehensive and well-reasoned majority opinion in *Little* (85 U.S. App. D.C. 242, 245-246):

> "It is said to us that the regulations sought to be enforced by this search only incidentally involved criminal charges, that their purpose is to protect the

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[12] The Maryland court apparently accepted (and rightly so) the fact that a health "inspection" or "examination" is a "search" within the meaning of the pertinent constitutional provisions. The point is not discussed in the *Givner* opinion and appellant passes it also, except to note the statement in *Little* that (85 U.S. App. D.C. 242, 247):

> "Distinction between 'inspection' and 'search' of a home has no basis in semantics, in constitutional history, or in reason. 'Inspect' means to look at, and 'search' means to look for. To say that the people, in requiring adoption of the Fourth Amendment, meant to restrict invasion of their homes if government officials were looking for something, but not to restrict it if the officials were merely looking, is to ascribe to the electorate of that day and to the several legislatures and the Congress a degree of irrationality not otherwise observable in their dealings with potential tyranny."

public health. It is argued that the Fourth Amendment provision regarding searches is premised upon and limited by the Fifth Amendment provision regarding self-incrimination. It is said to us that therefore there is no prohibition against searches of private homes by government officers, unless they are searching for evidence of crime; that if they are searching for evidence of crime, they must get a search warrant, but that if they are searching for something else or are just searching, they need not get a search warrant; for searchers of the latter sort, we are told, home owners must open their front doors upon demand of an officer without a warrant. The argument is wholly without merit, preposterous in fact. The basic premise of the prohibition against searches was not protection against self-incrimination; it was the common-law right of a man to privacy in his home, a right which is one of the indispensable ultimate essentials of our concept of civilization. It was firmly established in the common law as one of the bright features of the Anglo-Saxon contributions to human progress. It was not related to crime or to suspicion of crime. It belonged to all men, not merely to criminals, real or suspected. So much is clear from any examination of history, whether slight or exhaustive. The argument made to us has not the slightest basis in history. It has no greater justification in reason. To say that a man suspected of crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity."

If the argument advanced by the supporters of warrantless health inspections is followed to its logical conclusion, it would seem necessary to believe that the people had no guaranty whatsoever against unreasonable invasion of their homes prior to the Fourth Amendment, but that the Amendment, for the first time, afforded them such protection, and, even then, only in limited circumstances, *i.e.*, in connection with criminal prosecutions or enforcement of penalties. The result destroys the argument. As was

pointed out by the majority in *Little* (85 U.S. App. D.C. 242, 246):

> "The argument involves a basic error in reasoning in respect to the Constitution's Bill of Rights. The Fourth Amendment did not confer a right upon the people. It was a precautionary statement of a lack of federal governmental power, coupled with a rigidly restricted permission to invade the existing right. The right guaranteed was a right already belonging to the people. The reason for the search warrant clause was that public interest required that personal privacy be invadable for the detection of crime, and the Amendment provided the sole and only permissible process by which the right of privacy could be invaded. To view the Amendment as a limitation upon an otherwise unlimited right of search is to invert completely the true posture of rights and the limitation thereon."

This Court has indicated that the scope of the Fourth Amendment is not limited to searches for evidence to be used in criminal prosecutions, but extends to civil matters as well (*Federal Trade Commission v. American Tobacco Company*, 264 U.S. 298; *Harriman v. Interstate Commerce Commission*, 211 U.S. 407; *District of Columbia v. Little*, 339 U.S. 1, 3. (See the Court's statement of the constitutional contentions therein.)), as have other courts.[13]

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[13] *Federal Trade Commission v. Tuttle*, 2 Cir., 244 F. 2d 605 (Production, under subpoena, by one neither being investigated nor proceeded against, of documents relating to matters under investigation by F.T.C.); *Federal Communications Commission v. Cohn*, D.C., S.D., N.Y. 154 F. Supp. 899 (Production, under subpoena, of material relevant to scope of broadcasting network study being made by F.C.C.); *Application of Certain Chinese Family Benevolent and District Associations*, D.C. N.D. of Calif., S.D., 19 F.R.D. 97 (Production, under subpoena, of records and documents, at request of Grand Jury. The opinion points out that, "The Government contends that all of the persons and organizations here involved have been called before the Grand Jury in the capacity of witnesses in the possession of documentary evidence necessary to the Grand Jury investigation, and *that none of the persons or organizations are suspect of criminal ac-*

The founding fathers were probably not much concerned with health code inspections when they framed the constitutional prohibition against unreasonable searches. Still, a strange anomaly arises if one therefore concludes that people as seemingly jealous of the prerogatives of personal liberty as were the founders, intended to guard themselves against searches for criminal evidence, but, at the same time, to lay open their homes and privacy to non-criminal searches, the necessity for which seems scarcely as acute as the need, in the public interest, for protection against crime. "Historically it was probably the abuses of the general warrant which led to the adoption of the Fourth Amendment, but the individualistic spirit of that age would have rebelled equally at noncriminal invasion of the home unknown in 1789 when government was simpler." 63 Harvard Law Review (1949) 350. Established constitutional principles are to be adapted to assure proper application to modern conditions of life. *McCulloch v. Maryland*, 4 Wheat. 316. The Fourth Amendment and the Due Process Clause should now be applied to invalidate searches of private homes by health officers without warrants, whether carried out in connection with "criminal" or "civil" proceedings.

Appellant, of course, contends that the intended search of his home was a search connected with a criminal prosecution. If the problem is approached on the narrow front of the operation and effect of Section 120 alone, then pro-

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tivities which will render them subject to criminal prosecution". (19 F.R.D. 97, 99; emphasis supplied). The court also remarked that, "In any event, this power (the power of the Grand Jury to require by subpoena the production before it of documents and records relevant to its investigation) *is subject to the supervision of the Courts to see that it is not unreasonably or oppressively exercised.*" (*Id.*, words in parentheses and emphasis supplied.) The court held that, under the Fourth Amendment, the witnesses could not be required to produce the documents sought). Compare the power of the health officer under Section 120 of the Baltimore City Health Code.

ceedings for violation thereof are clearly criminal in nature (*supra*, pages 18-19). Even if the issue is appraised from a broader viewpoint of the operation and effect of the entire (appropriate portions of the) Baltimore City Health Code, the outcome is still the same. The ultimate result of the search authorized by Section 120, of which the instant case is an example, may well be a criminal prosecution for violation of any of the numerous provisions of that Code. See, particularly with respect to private dwellings, Baltimore City Code (1950) Article 12 (Pamphlet opposite R. 36), Sections 106-108 ("Nuisances and the Prevention of Disease") and Sections 112-120 ("Hygiene of Housing"). Of course there are provisions relating to notice (*e.g.*, *Id.*, Sections 107 and 112) to abate suspected nuisances (These provisions do not seem to be mandatory; they generally provide that the Commissioner of Health "*may* send a written notice" (See, *Id.*, Section 112; emphasis supplied.), but none for hearings with regard thereto, until criminal proceedings are instituted under the pertinent penalty section of the Health Code punishing the particular violation. The Baltimore City Health Code does not seem specifically to provide for re-inspections, but second inspections are, in practice, carried out. The evidence typically presented at trial of an offender for violation of that Code is to the effect that an initial inspection disclosed a violation which was found still to be present upon a second inspection,[14] despite that a notice to correct had been given and time for compliance had expired. Appellant submits that evidence (*e.g.*, the defective condition of premises) obtained in the first inspection is thus used in a criminal prosecution and that

[14] Re-inspections, of course, present a problem, even in the view taken by proponents of inspections without warrants, for such second inspections, quite clearly (in Baltimore City, at least), are designed and intended to obtain evidence of violations of the health code for use in criminal prosecutions initiated by the health enforcement agency and prosecuted by the State.

the first inspection is, to that extent at least, as much as is an investigation conducted by any police or other enforcement officer, "a search for evidence to be used in a criminal prosecution" (*Givner v. State*, 210 Md. 484, 504).

E. The Proposed Search of Appellant's Home Without a Warrant was Unreasonable and Cannot be Justified on any Ground.

Reasonbleness of the intended search of appellant's home by the health officer must be determined in accordance with the same standards including the requirements of the Fourth Amendment (if not acting directly, then through the Due Process Clause. *Wolf v. Colorado*, 338 U.S. 25), which would be applied to any other search by government officials. So tested, both the search and the ordinance which purports to permit it are fatally defective and must be stricken down.

Reasonableness of a search without a warrant is to be judged by the exigencies of the occasion. *Johnson v. United States*, 333 U.S. 10. There was not in the instant case any such extremity of circumstances as would have warranted the health officer's attempt to thrust himself into appellant's home without a warrant. There was no emergency, immediate or otherwise, unless the sanitarian's explanations that he was apparently busy[15] (R. 19), or that he "had two students (he) had to release at three o'clock" (R. 20; word in parentheses supplied), or that he had "to be in the office at three thirty every day to take care of my reports" (R. 20), or that "Rodent infestation is always an emergency" (R. 20) are to be accepted as establishing the existence of circumstances sufficiently compelling to warrant dispensing with the necessity for a search warrant.

[15] "I was under the impression it was a vacant dwelling. I was snowed under in work" (R. 20).

The sanitarian had ample time to apply for a warrant if he chose to do so. The nature of the nuisance which he claimed to suspect was not such that it might be removed from his jurisdiction before he could return with a proper warrant. And in fact he returned to appellant's house on the day after his demand for entry (R. 21) and again a week later (R. 8) to compile evidence for use at trial (R. 8). Surely his examination of the house could just as well have been made on either of the two occasions, or at any other time, and with a proper warrant. The sanitarian simply chose to ignore these opportunities. He chose to insist on his supposed authority under the ordinance arbitrarily to demand entry without a warrant, despite that appellant informed him he could get in the house with a warrant (R. 19).

His conduct in itself exemplifies part of the danger inherent in allowing an enforcement officer to be himself the judge of the necessity for, and the time and place when, he shall intrude upon the privacy of a home. Reasonableness, except in the most urgent situations, is to be determined not by an enforcement, but by a judicial officer. *Johnson v. United States*, 333 U.S. 10. There is certainly no lack of opinion in this Court condemning invasion of private dwellings without the intervention of a magistrate or other judicial officer. *Agnello v. United States*, 269 U.S. 20; *Harris v. United States*, 331 U.S. 145; *Davis v. United States*, 328 U.S. 582; *Johnson v. United States*, 333 U.S. 10; *McDonald v. United States*, 335 U.S. 451; *Wolf v. Colorado*, 338 U.S. 25; *Miller v. United States*, 357 U.S. 301, 78 S. Ct. 1190, 2 L. ed. 2d 1332; *Jones v. United States*, 357 U.S. 493, 78 S. Ct. 1253, 2 L. ed. 2d 1514.

And, of course, warrants are to be granted by the judicial officer, and searches permitted, only upon probable cause, not mere suspicion. *Johnson v. United States*, 333 U.S. 10. That the ordinance in the instant case not only permits the

enforcement officer to determine the necessity for search, but authorizes him to do so upon suspicion alone, should in itself insure its demise.

Protection of the public health is a function no more vital than securing the public safety against crime. Extermination of rats ("rodents" (R. 16)) is of no greater public importance than punishment of murderers, embezzlers, panderers, gangsters, gunmen or racketeers. Protection of the public health would seem to necessitate no greater infringement of the individual's privacy than protection against crime.

Fire prevention laws are as important, as much in the public interest and as much a part of the police power as are health laws. Yet, interestingly enough, "the authority to inspect conferred under the Fire Prevention Code . . . (of Baltimore City) expressly excepts inspections of private residences" (*Givner v. State*, 210 Md. 484, 490; words in parentheses supplied).

Control of rodents is no more essential than control of contagious or infectious diseases, such as, *e.g.*, smallpox or cholera or typhoid fever,[16] yet the Baltimore City Health Code itself provides that, "Whenever the Commissioner of Health may have just cause to suspect that any baggage, clothing, bedding or goods of any character, found in the city, are infected with any contagious or infectious diseases, which may be dangerous to the public health, *he shall proceed to the nearest magistrate, and obtain a warrant*, and have said goods removed . . ." (Section 208; page 82 (fol. 132) of pamphlet opposite R. 36; emphasis supplied).[17]

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[16] For a more exhaustive list, see Baltimore City Code, Article 12, Section 197 ("Reportable Diseases") (Page 79 (fol. 129) of pamphlet opposite R. 36).

[17] The suggestion that there is doubt whether a search warrant is obtainable to conduct a search under health codes, which, admittedly

It is said that searches under Section 120 of the Baltimore City Health Code are reasonable, in part because they "are to be made at reasonable hours", i.e. in the day time. *Givner v. State*, 210 Md. 484, 508. It is of interest in that connection to note that certain of the general warrants so heinous to our forefathers would also be reasonable if judged by that standard, since they too were reserved for use in the day time only![18] This feature apparently failed to make them any more palatable.

Instances are pointed out of "reasonable inspection laws" relating to pawnbrokers, food dealers, inns, hotels and institutions.[19] But hotels, for instance, "are subject to government license, but no one has ever suggested that in this country a man could be required to have a license to have a home" (*District of Columbia v. Little*, 85 U.S. D.C. 242, 249).

2. APPELLANT SEEKS NOTHING MORE THAN SIMPLE PROCEDURAL DUE PROCESS. THE CONSTITUTIONAL GUARANTIES UPON WHICH HE RELIES ASSURE HIM THAT MINIMAL PROTECTION.

Appellant does not in this cause attack the substantive validity of the Baltimore City Health Code, or the necessity for concomitant enforcement procedures. Nor does he

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"of itself would not prove that a search warrant is unnecessary" (*Givner v. State*, 210 Md. 484, 503; *District of Columbia v. Little*, 85 U.S. App. 242), would seem to be based on misconception. And, in any event, remedial legislation can be implemented, if needed.

[18] Tudor, *The Life of James Otis* (1823) 78, 79 refers to a "statute of the 13th and 14th of Charles the second" which provided, in part "that, 'it shall be lawful to or for, any person or persons, authorized by *writ of assistance under the seal of his majesty's Court of Exchequer*, to take a constable, headborough, or other public officer, inhabiting near unto the place, and *in the day time* to enter, and go into any house, shop, cellar, warehouse, or room, or other place, . . .'" (The first italics above are in the text cited; the second italics are supplied. Compare Baltimore City Code, Article 12, Section 120).

[19] See page 5 of appellee's "Motion to Affirm", filed herein.

contend that the municipality lacks the power properly to provide for protection of the health of its residents.

He urges only that the due process of law secured to him by the federal constitution not be jettisoned along the way to accomplishment of that most salutary end. He objects to the means sought to be used against him. He seeks nothing more than procedural due process. This the ordinance (Section 120) denies him. It is hence invalid. The lower court erred in failing to recognize this invalidity, in refusing to grant appellant's several motions seeking to resolve the issues in his favor on constitutional grounds and in its verdict. If in fact probable cause exists to presume a nuisance in his house, a warrant can so easily be obtained from a magistrate and a lawful search conducted that no valid reason appears why the business of the Baltimore City Health Department should not be conducted without encroaching on the liberties of the residents of that City. Appellant submits that an "appropriate balancing . . . of the liberty of the (people) and the convenience of the (health officers)"[20] requires no less.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

BENJAMIN LIPSITZ,
Counsel for Appellant

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[20] Words in parentheses are supplied. The reference is to the remarks of Lord Simonds in *Christie v. Leachinsky*, 1 All E.R. 567, 576, as quoted in the dissent of Mr. Justice Frankfurter in *Harris v. United States*, 331 U.S. 145, 170, in regard to the problem of "the appropriate balancing, in the words of Lord Simonds, of 'the liberty of the subject and the convenience of the police' ".

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 278

AARON D. FRANK,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CRIMINAL COURT OF BALTIMORE, STATE OF MARYLAND

BRIEF OF APPELLEE

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IN THE

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OCTOBER TERM, 1958

No. 278

AARON D. FRANK,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

APPEAL FROM THE CRIMINAL COURT OF BALTIMORE, STATE OF MARYLAND

BRIEF OF APPELLEE

OPINION BELOW

Although no opinion was delivered by the Court below, similar questions have previously been decided by the Maryland Court of Appeals in *Givner v. State*, 210 Md. 484, 124 A. 2d 764.

QUESTION PRESENTED

Was the inspection sought to be made of the Appellant's premises by a Health Inspector of Baltimore City without a search warrant, pursuant to the Baltimore City Code, such an unreasonable search as is prohibited by the Fourth or Fourteenth Amendment of the Constitution of the United States?

CONSTITUTIONAL PROVISIONS AND ORDINANCE INVOLVED

The Fourth Amendment to the Constitution of the United States provides (1 U.S.C., 1952 Edition, XLIV):

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

The Fourteenth Amendment to the Constitution of the United States provides, in part (1 U.S.C., 1952 Edition, XLV):

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Baltimore City Code (1950 Edition), Article 12, Section 120, provided on the dates involved in this case and now provides (page 56 (fol. 106) of pamphlet opposite R. 36):

> "120. Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay over for every such refusal the sum of Twenty Dollars."

STATEMENT

This is an appeal from the Criminal Court of Baltimore (Maryland) after certiorari had been denied by the Court of Appeals of Maryland. The Appellant was convicted of refusing to allow a health inspector to enter his house in the daytime for the purpose of inspecting his house for a suspected health nuisance and sentenced under Section 120 of Article 12 of the Baltimore City Code (1950 Edition) to pay a fine of Twenty Dollars ($20.00).

The facts as set forth in the Appellant's brief, pages 4-8, are substantially correct and, therefore, are adopted by the Appellee.

SUMMARY OF ARGUMENT

A Baltimore City Health Inspector, acting under the health article of the City Code, is lawfully entitled to enter and inspect the Appellant's residence without violating the provisions of the Fourth or Fourteenth Amendments to the Constitution of the United States.

The protection, privilege or immunity against unreasonable searches guaranteed to the Appellant by the Fourth Amendment applies only to Federal agents and officials and not to State or City agents and officials. *Barron v. Baltimore*, 7 Peters 243, 8 L. Ed. 672; *Twining v. New Jersey*, 211 U.S. 78, 53 L. Ed. 97.

However, it has been stated that a State may not affirmatively sanction an unlawful search and seizure without violating the Due Process Clause of the Fourteenth Amendment. *Wolf v. Colorado*, 338 U.S. 25, 93 L. Ed. 1782.

The question is whether the intended inspection was unlawful. It is clear that prohibitions against unreasonable searches and seizures do not prohibit reasonable

searches and seizures. *United States v. Rabinowitz*, 339 U.S. 56, 94 L. Ed. 653.

Historically, the abuses which gave rise to constitutional provisions against unreasonable searches and seizures grew out of searches for evidence to be used in criminal prosecutions. The historical background of the constitutional provisions may throw some light on what would constitute an unreasonable search if made without a warrant.

True, the privacy of the home of an individual is invaded by an inspection by the City Health Inspector but the privacy of the individual must be weighed against the protection of the health and safety of the public.

It is the Appellee's position that the exercise of police power in this case was such as was reasonable and necessary to protect the public health, safety and welfare.

The attempted inspection of the Appellant's property was in response to a complaint which was registered as to the presence of rats in a neighbor's house. The health inspectors, following their usual practice, commenced an inspection of the neighboring houses and Appellant's house happened to be in the block.

It is to be noted that all of the inspections authorized by the ordinance are to be made at reasonable hours, and there is no suggestion that any of the inspections are to be used as a cover to conduct a search for any violations of the criminal law or for any purpose other than the preservation of health and safety.

There is serious doubt as to whether, under the circumstances of this case, a search warrant is obtainable in Maryland, which of itself would not prove that a search warrant is unnecessary. However, it does tend to support the rather restricted common law concept of the office of

a search warrant, which presumably was in mind at the time of the adoption of the Federal constitutional provisions with regard to searches and seizures. Even if a warrant were provided, in the overwhelming majority of instances it would be impossible for the health inspector to make any showing of probable cause.

It is submitted that, on the facts, on the basis of the ordinance involved, in light of the established practices as to the enforcement of the ordinance in Baltimore, and the necessity involved, the inspections are of a routine nature made at reasonable hours, and are primarily for protective, not punitive, purposes. Such inspections, it is submitted, are not unreasonable, and hence are not unlawful. Since they are not unlawful, they do not involve any violation of the Fourteenth Amendment.

ARGUMENT

A Baltimore City Health Inspector, Acting Under the Health Article of the City Code, is Lawfully Entitled to Enter and Inspect the Appellant's Residence Without Violating the Provisions of the Fourth or Fourteenth Amendments to the Constitution of the United States.

A. The Fourth Amendment does not apply to State and City Officials or Agents.

The protection, privilege or immunity guaranteed to the Appellant by the Fourth Amendment to the Constitution of the United States against unreasonable searches applies only to Federal agents and officials and not to State and City agents and officials. This Court has consistently so held. *Barron v. Baltimore*, 7 Peters 243, 8 L. Ed. 672; *Weeks v. United States*, 232 U.S. 383, 58 L. Ed. 652; *Burdau v. McDowell*, 256 U.S. 465, 65 L. Ed. 1048; *Twining v. New Jersey*, 211 U.S. 78, 53 L. Ed. 97; *Adamson v. California*, 332 U.S.

46, 91 L. Ed. 1903; *Maxwell v. Dow*, 176 U.S. 581, 44 L. Ed. 597; *Wolf v. Colorado*, 338 U.S. 25, 93 L. Ed. 1782.

In *Barron v. Baltimore*, 7 Peters 243, 8 L. Ed. 672, decided in 1833, the plaintiff sued the City to recover damages for injuries to his wharf. The City, in adopting new grades for streets, had diverted certain streams of water and these streams deposited debris in front of plaintiff's wharf and rendered the water in front of plaintiff's wharf shallow. The plaintiff maintained that this act of the City was repugnant to the Fifth Amendment to the Constitution of the United States which declares that "private property shall not be taken for public use without just compensation". The plaintiff contended that the Fifth Amendment regulated the legislation of the States for the protection of people in each and all of the States regarded as citizens of the United States, or as inhabitants subject to the laws of the union.

Chief Justice John Marshall, in dismissing the case for lack of Federal jurisdiction, made the following comments on the rights of United States citizens at page 247:

> "The question, thus presented, is, we think, of great importance, but not of much difficulty.
>
> The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily applicable to the govern-

ment created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes. * * *

We are of opinion that the provision in the Fifth Amendment of the Constitution, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States."

The language of the Fourteenth Amendment to the Federal Constitution that "no state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law" does not operate as shorthand for the first eight amendments of the Constitution and does not thereby incorporate them. *Twining v. New Jersey*, 211 U.S. 78, 53 L. Ed. 97; *Palko v. Connecticut*, 302 U.S. 319, 82 L. Ed. 288; *Adamson v. California*, 332 U.S. 46, 91 L. Ed. 1903; *Wolf v. Colorado*, 338 U.S. 25, 93 L. Ed. 1782.

In *Twining v. New Jersey*, 211 U.S. 78, 53 L. Ed. 97, this Court held that the action of a State infringing the right safeguarded by the Fifth Amendment relating to self-incrimination was not prohibited by the Fourteenth Amendment as being a denial of due process and that the exemption from compulsory self-incrimination is not a privilege or immunity of national citizenship guaranteed by the Fourteenth Amendment against abridgment by the States.

This Court, in the *Palko* case, 302 U.S. 319, 82 L. Ed. 288, held that a conviction in a State court of murder in the first degree on a second trial of a criminal prosecution, after a conviction of murder in the second degree had been

set aside on appeal taken by the State, was not in derogation of any privileges or immunities that belong to the accused as a citizen of the United States in violation of the Fourtenth Amendment, and also that the Due Process Clause of the Fourteenth Amendment was not violated.

In the *Adamson* case, 332 U.S. 46, 91 L. Ed. 1903, this Court held that the clause of the Fifth Amendment protecting a person against being compelled to be a witness against himself is not made effective by the Fourteenth Amendment as a protection against State action on the ground that freedom from testimonial compulsion is a right of national citizenship or because it is a personal privilege or immunity secured by the Federal Constitution as one of the rights of man that are listed in the Bill of Rights.

Lower Federal Courts have held that the right of people under the Fourth Amendment to be secure in their persons, houses, papers and effects relates only to Federal action and is not one of the "privileges and immunities" of citizens of the United States which the Fourteenth Amendment forbids the States to abridge. *Atterberry v. Fortson* (1956), 230 F. 2d 604 (C.A. 5); *Mackey v. Chandler* (1957), 152 F. Supp. 579 (W.D. S.C.).

In the *Wolf* case, 338 U.S. 25, 93 L. Ed. 1785, Mr. Justice Frankfurter said at p. 26:

> "The notion that the 'Due Process of Law' guaranteed by the 14th Amendment is shorthand for the first eight amendments of the Constitution and thereby incorporates them, has been rejected by this court again and again, after impressive consideration. * * * the issue is closed."

Although the holding was narrowly confined to stating that "in a prosecution in a state court for a state crime, the 14th Amendment does not forbid the admission of evidence

obtained by an unreasonable search and seizure", in the course of his opinion, Mr. Justice Frankfurter said at page 26 of 338 U.S.:

> "For purposes of ascertaining the restrictions which the Due Process Clause imposed upon the states in the *enforcement of their criminal law,* we adhere to the views expressed in *Palko v. Connecticut, supra.* * * * In rejecting the suggestion that the Due Process Clause incorporated the original Bill of Rights, Mr. Justice Cardozo reaffirmed on behalf of that court a different but deeper and more pervasive conception of the Due Process Clause. This Clause exacts from the states for the lowliest and most outcast all that is 'implicit in the concept of ordered liberty'. * * * The security of one's privacy against arbitrary intrusion by the police — which is at the core of the 14th Amendment — is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the states through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English speaking peoples. Accordingly, we have no hesitation in saying that were a state affirmatively to sanction such police incursion into privacy, it would run counter to the guarantee of the 14th Amendment." (Emphasis supplied.)

Relying upon the propositions, the plaintiff in *Stefanelli v. Minard* (1951), 342 U.S. 117, 96 L. Ed. 138, brought suit in a Federal Court for an injunction to prevent the fruit of an unlawful search by New Jersey police from being used in evidence in a forthcoming State criminal trial, proceeding on the theory that the illegal search deprived him of rights, privileges or immunities secured by the

Federal Constitution. This Court, in an opinion by Mr. Justice Frankfurter, reaffirmed the rule "that the security of one's privacy against arbitrary intrusion by the police, which is at the core of the Fourth Amendment, is basic to a free society and that were a State affirmatively to sanction such police incursion into privacy, it would run counter to the guarantee of the Fourteenth Amendment", but denied relief on the ground that Federal Courts should refuse to intervene in State criminal proceedings to suppress the use of evidence even when claimed to have been secured by unlawful search and seizure.

It is therefore submitted that the Fourth Amendment is solely a limitation on the exercise of power of the government of the United States and is not applicable to action by the States.

B. THE INSPECTION AS AUTHORIZED DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The rule as stated by this Court in *Wolf v. Colorado*, 338 U.S. 25, 93 L. Ed. 1782, is that a State may not affirmatively sanction an unlawful search and seizure without violating the Due Process Clause of the Fourteenth Amendment. The question in this case then is whether the intended inspection was unlawful. In the *Wolf* case, *supra*, this Court adhered to the doctrine that the Fourteenth Amendment was not "shorthand for the first eight amendments of the Constitution" and, therefore, does not incorporate them but stated that the security of one's privacy against arbitrary intrusion by the police is basic to a free society, therefore implicit in "the concept of ordered liberty" and as such is enforceable against the States through the Due Process Clause.

It is, however, clear that prohibitions against *unreasonable* searches and seizures do not prohibit *reasonable* searches and seizures. *United States v. Rabinowitz*, 339 U.S. 56, 94 L. Ed. 653.

The question of what is a reasonable search cannot be answered by any fixed formula as the Constitution does not define what are "unreasonable" searches. Each case is to be decided on its own facts and circumstances. *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 75 L. Ed. 374; *Harris v. United States*, 331 U.S. 145, 91 L. Ed. 1399. Historically, the abuses which give rise to constitutional provisions against unreasonable searches and seizures grew out of searches for evidence to be used in criminal prosecutions. The origin of prohibitions against unlawful searches and seizures date back to the Writ of Assistance in England issued by the Star Chamber, under command of which the King's messengers entered any place they desired and searched for and seized any papers and evidence which they chose. The validity of this action came before the English courts in the case of *Entick v. Carrington*, 2 Wils. 275, 95 Eng. Reprint 807, 19 Howell St. Tr. 1029, where Lord Camden held that general warrants were invalid. The same principle was adopted following the issuance of the crown of writs of assistance in the American Colonies primarily in Massachusetts, where a noteworthy trial occurred in Boston in 1761, in which James Otis, one of the counsel for the defendants, made a lasting argument against the use of such general writs. See *Boyd v. United States*, 116 U.S. 616, 29 L. Ed. 746.

Referring to the Fourth Amendment, Story, in his *Commentaries on the Constitution of the United States*, Section 1902, says: "its introduction into the amendments was doubtless occasioned by the strong sensibility excited, both in England and America, upon the subject of general warrants almost upon the eve of the American Revolution."

In light of the background of the Fourth Amendment, Judge Holtzoff, in his dissenting opinion in *District of Columbia v. Little*, 85 U.S. App. D.C. 242, 178 F. 2d 13, said:

> "The Fourth Amendment was intended and is to be construed to apply only to criminal prosecutions and proceedings of a quasi-criminal nature for the enforcement of penalties. Its purpose is to limit and regulate searches conducted with a view to discovering and seizing books, papers, and objects to be used as evidence in a criminal proceeding or in an action for the enforcement of a penalty; and to protect any person against the use of evidence in a criminal or penal proceeding, if it has been procured from him by an unreasonable search and seizure. It does not affect the administration of law if criminal prosecutions or suits for penalties are not involved. It does not apply to inspections, if no seizure is intended."

Thus, this Court, in *Murray v. Hoboken Land and Improvement Co.*, 18 How. 272, 15 L. Ed. 332, held unanimously that the limitations of the Fourth Amendment did not apply to distress warrants for the collection of taxes.

In *United States v. 62 Packages, etc.*, 48 F. Supp. 878, 884, aff. 142 F. 2d 107 (C.C.A. 7), it was stated that "the Fourth Amendment to the United States Constitution does not apply to a seizure process in civil actions".

Camden County Beverage Co. v. Blair, 46 F. 2d 648 (D.N.J. 1930), was a case where prohibition agents broke and entered the plant of the complainant and seized certain evidence. The Court felt that this evidence was only to be used to revoke complainant's license, a thing strictly civil in nature, and, therefore, was not within the Fourth or Fifth Amendments.

Boyd v. United States, 116 U.S. 616, 634, 29 L. Ed. 746, involved the application of the Fourth Amendment to

certain custom laws. In that case, the Court made the following observations:

> "As, therefore, suits for penalties and forfeitures, incurred by the commission of offenses against the law, are of this quasi criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the fourth amendment of the constitution, and of that portion of the fifth amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; * * *."

We are unable to find any reported case that extends the scope of the Fourth Amendment to fields other than criminal or quasi-criminal law or enforcement of penalties except the *Little* case, 85 U.S. App. D.C. 242, 178 F. 2d 13.

Cornelius on *Searches and Seizures*, 2nd Ed., Section 35, states:

> "The constitutional provision in question, while primarily designed to protect the individual in the sanctity of his home and in the privacy of his books, papers and property, does not apply to reasonable rules and regulations adopted in the exercise of the police power for the protection of the public health, morals and welfare."

Then he cites some examples of reasonable inspection laws relating to pawnbrokers and food dealers. The inspection of inns or hotels and institutions is upheld. *Hubbell v. Higgins*, 148 Ia. 36, 126 N.W. 914; *Sister Felicitas v. Hartridge*, 148 Ga. 832, 98 S.E. 538.

In *Simms v. Liuzza*, 168 La. 714, 123 So. 301, the Louisiana Court said:

> "Plaintiff contests the right of the state fire marshall to order ex parte the demolition of Liuzza's building. In *Zibilich v. Rouseo*, 166 La. 547, 117 So. 586, we said

that:

"'Section 5 of Act No. 26 of 1914 empowers the fire marshall or his authorized representative, upon complaint of any person having an interest in any building or property adjacent, and without any such complaint, to enter into and upon all buildings at all reasonable hours for the purpose of examination, and whenever any building or other structure which, for want of proper repair, or by reason of age and delapidated condition, or for any cause, is especially liable to fire, the said fire marshall or his representative shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of the said building.'

"The fire marshall, therefore was vested with the power under the law to inspect the building in question for the purpose of determining its condition with respect of its liability to fire, and, if he found such to be the fact, to order the owner to demolish the structure."

The Appellant cites and relies upon the case of *District of Columbia v. Little*, 62 A. 2d 874 (Ct. of Mun. App. D.C.), aff. 178 F. 2d 13, 13 A.L.R. 2d 954, 85 U.S. App. D.C. 244, aff. 339 U.S. 1, 94 L. Ed. 599. The Municipal Court of Appeals reversed on constitutional grounds the conviction of Little on a charge that she had interfered with a health officer of the District of Columbia in his duty of inspecting her house.

The facts were that a health officer, in response to a complaint, went to Little's house to investigate. The health officer, who did not have a search warrant, requested Mrs. Little to allow him in her house to inspect the premises. She protested his right to enter her house and refused to unlock the door for him. She neither used nor threatened force of any kind. The Court of Appeals for the District of Columbia affirmed the judgment of the Court of Municipal Appeals by a 2-1 decision, in which both the majority and the minority proceeded entirely on constitutional grounds.

On *certiorari*, a majority of the Supreme Court, in an opinion by Mr. Justice Black, affirmed the judgment of the Court of Appeals on the ground that her "mere refusal to unlock the door accompanied by remonstrances on substantial constitutional grounds was" not "the kind of interference prohibited by the (District of Columbia health) regulations" upon which the prosecution was based. The majority found it unnecessary to consider the constitutional question of whether or not the Fourth Amendment prohibited the health officer from inspecting the premises without a search warrant. Mr. Justice Burton, with whom Mr. Justice Reed agreed, dissented on the factual question and disagreed with the Court of Appeals on the constitutional question. Mr. Justice Burton said in the dissenting opinion:

> "* * * In my opinion, also, the duties which the inspector was seeking to perform, under the authority of the District, were of such a reasonable, general, routine, accepted and important character, in the protection of the public health and safety, that they were being performed lawfully without such a search warrant as is required by the Fourth Amendment to protect the right of the people to be secure in their persons, house, papers and effects against unreasonable searches and seizures.
>
> "Accordingly, the conviction of the respondent should be sustained, and the judgment of the United States Court of Appeals affirming the judgment of the Municipal Court of Appeals setting aside that conviction should be reversed."

The majority opinion in the Court of Appeals of the District of Columbia holds that the Fourth Amendment prohibits the search of a home by a health officer of the District without a search warrant. The minority opinion in that Court takes the view that the requirements for

search warrants are applicable only in criminal cases, and that the object of a health department inspection is essentially a civil matter, to which any criminal prosecution is only incidental.

The majority opinion of this Court (at 339 U.S. 2-6) states in part:

> "In this Court the constitutional arguments have extended far beyond the comparatively narrow issues involved in the particular case. At one extreme the District argues that the Fourth Amendment has no application whatever to inspections and investigations made by health officers; that to preserve the public health, officers may without judicial warrants enter premises, public buildings and private residences at any reasonable hour, with or without the owner's consent. At the opposite extreme, it is argued that no sanitary inspection can ever be made by health officers without a search warrant, except with a property owner's consent. Between these two extremes are suggestions that the Fourth Amendment requires search warrants to inspect premises where the object of inspections is to obtain evidence for criminal punishment or where there are conditions imminently dangerous to life and health, but that municipalities and other governing agencies may lawfully provide for general routine inspections at reasonable hours without search warrants. An impressive array of facts is also presented concerning the uniform practices of agencies of local governments to provide for such general routine inspections in connection with sanitation, plumbing, building, etc.
>
> "Neither the facts of this case, nor the District law on which the prosecution rests, provide a basis for a sweeping determination of the Fourth Amendment's application to all these varied types of investigations, inspections and searches. Yet a decision of the constitutional requirement for a search in this particular case might have far reaching and unexpected impli-

> cations as to closely related questions not now before us. This is therefore an appropriate case in which to apply our sound general policy against deciding constitutional questions if the record permits final disposition of a cause on non-constitutional grounds. * * *"

It is true that there are many cases to the effect that a search of a home without a search warrant, otherwise than as an incident to a lawful arrest, is unlawful. See *Agnello v. United States*, 269 U.S. 20, 70 L. Ed. 145; *Harris v. United States*, 331 U.S. 145, 91 L. Ed. 1399. These cases, however, dealt with criminal prosecutions only and therefore would not be conclusive in this case.

It is the Appellee's position that the exercise of police power in this case was such as was reasonable and necessary to protect the public health, safety and welfare.

The inspection by the health inspector is in the exercise of the "police power". This was recognized in the majority opinion of the United States Court of Appeals for the District of Columbia in the *Little* case, 85 U.S. App. D.C. 242, 178 F. 2d 13, 13 A.L.R. 2d 954.

There is in the present case an instance of a collision between a constitutional provision, the Fourteenth Amendment, and an exercise of the "police power" when used in the sense of that inherent power of the State exercised to preserve the public health.

The Fourteenth Amendment can no more be considered a privilege to conceal upon private premises filth which directly endangers the health of the community, than can the First Amendment be considered a privilege to arise in a crowded theatre and cry "Fire". *Schenck v. United States*, 249 U.S. 47, 63 L. Ed. 470.

It would appear evident, from a consideration of the results which can flow from the existence and accumulation of filth, garbage, rodents, etc., that the minimum activity which is necessary to discover and abate such condition is a reasonable exercise of the police power.

In *Nebbia v. New York*, 291 U.S. 502, 524, 78 L. Ed. 940, this Court in upholding the conviction of a storekeeper for selling milk at a price below that allowed by an order promulgated by a State board, pursuant to a statutory authority, held respecting the exercise of the police power:

> "* * * Touching the matters committed to it by the Constitution, the United States possesses the power, as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizens to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always on collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.
>
> "The Fifth Amendment in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regula-

tion valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

In numerous other cases, the Supreme Court has held that the particular constitutional provision invoked either did not apply, or that the police power exercised was a proper limitation upon the right granted by the constitutional provision. *Mugler v. Kansas*, 123 U.S. 623, 31 L. Ed. 205; *Lawton v. Steele*, 152 U.S. 133, 38 L. Ed. 385; *District of Columbia v. Brooke*, 214 U.S. 138, 53 L. Ed. 941; *Calhoun v. Massie*, 253 U.S. 170, 64 L. Ed. 834; *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80, 90 L. Ed. 1096.

No one doubts the validity of protecting the right of privacy. It is not a right, however, which is inviolate in modern living. Freedom of speech is limited by the prohibition against publication of obscene material and against the creation of public disorder. Likewise, the right of freedom of religion does not permit acts that are regarded as illegal, immoral or offensive. In the same way, the right of privacy is not absolute but is and should be subject to certain limitations. It is not disputed that a representative of the fire department requires no search warrant to enter a house in order to extinguish a fire, even if the owner objects to his presence. Likewise, in most cases a representative of the Health Department may enter a home if one of its inhabitants is afflicted with a serious contagious disease and that disease would menace the community as a whole. It is also proper for public authorities to enter a home to suppress a nuisance, such as persons disturbing the peace of the neighborhood. These are all assaults upon our privacy which we accept as part of the price of living in a complex society. To say that we will accept these in-

vasions, but can bar the entry of inspectors who enter for the purpose of protecting the public health, is to fail to balance the conflicting rights in accordance with their relative weight. The entrance of the health inspector in the case at bar was for the protection of the homeowner as well as the rest of the community.

No exercise of a private right can be imagined which will not in some respect, however slight, affect the public. The Fourteenth Amendment, as respects State action, does not prohibit governmental regulation for public welfare; it merely conditions the exercise of the power by requiring that governmental regulation be consistent with due process. The guarantee of due process demands, in general terms, that the legislation be reasonable in the light of existing facts. In determining this reasonableness the court must evaluate the relative weights of the beneficial consequences which will follow, and the price which must be paid for them in the form of the resulting deprivation of liberty or freedom.

The choice in the instant case is between the interest of privacy and the interest of preserving the lives and health of the citizens of the City of Baltimore. The object of the entry in this case is for the purpose of discovering and abating nuisances, rather than for the purpose of securing evidence upon which to procure the conviction and punishment of a crime.

The duties of the Health Department to protect public health hardly require any reference but it may be worth mentioning the preamble to Ordinance No. 1543, which was passed by the Baltimore City Council (1950-1951) establishing the Housing Bureau of the Health Department. This preamble reads as follows:

> "Whereas, a major objective of the Mayor and City Council of Baltimore is to combat successfully slum

and blighted areas and prevent their future growth and

"Whereas, experience in the City of Baltimore has demonstrated that slum and blighted areas result in large measure from improper maintenance of dwellings, inadequate sanitation, overcrowding of dwellings and general community neglect in these areas and

"Whereas, experience has also shown that through well-planned and vigorous enforcement of minimum housing standards for safety, sanitation, population density and public health, these conditions can be relieved and prevented and

"Whereas, there has been developed in the City of Baltimore a municipal effort, known as 'The Baltimore Plan', for combating residential blight by vigorous housing law enforcement, which program requires for its maximum effectiveness:

(a) Aggressive enforcement of housing ordinances and regulations through the efforts of several of the departments of the City and the utilization of their several enforcement procedures.

(b) Compelling compliance with said ordinances and regulationse both in response to complaints and also at the initiative of the City on an area basis.

(c) Centralization in a single office of responsibility for assisting the several city departments involved in housing law enforcement in establishing policies, procedures and techniques which will assure uniform and consistent enforcement, and also for assisting these departments in planning their separate programs to avoid duplications, overlaps and conflicts, and to integrate the housing law enforcement effort with the programs of the Housing Authority of Baltimore City and the Baltimore Redevelopment Commission into an effective campaign against slum and blighted areas and

"Whereas, the Board of Estimates, prior to the adoption of this ordinance, has recommended the creation

> of an additional bureau in the Department of Health, to be known as the Housing Bureau, in order to meet the requirements of 'The Baltimore Plan' program hereinbefore recited * * *" (R. 94).

The attempted inspection of the Appellant's property was in response to a complaint which had been registered as to the presence of rats in a neighbor's house. The health inspectors, following their usual practice, commenced an inspection of the neighboring houses and Appellant's house happened to be in the block. The inspector viewed the yard and the exterior of Appellant's house and the inspector testified he saw trash, rodent feces and undue debris (R. 9). This we believe would be sufficient to satisfy the requirements of Section 120 of Article 12 of the Baltimore City Code as to cause one to suspect the existence of a nuisance in the Appellant's house. The health inspector, after viewing this property, had cause to suspect that a nuisance existed, and it was then necessary to inspect the premises so that steps could be taken to avert such a nuisance.

It is to be noted that all of the inspections authorized by the ordinance are to be made at reasonable hours. There is no suggestion that any of the inspections are to be used as a cover to conduct a search for any violations of the criminal law or for any purpose other than the preservation of health and safety. There is no suggestion of harassment by repeated inspections.

As was stated previously, the problem here is one of personal privacy as against the protection of the public health. The protection of the public health is the objective of the inspection in the present case. In the usual course of procedure, if violations of the health code are found, the property owner is informed of the violations and is ordered

to correct them within a stated period which is usually thirty days. If he fails to comply with such order, a prosecution is instituted for failure to do so.

Where there is reason to believe that a crime is being committed, but the circumstances are not such as to warrant an immediate arrest, and there is ample time to get a search warrant, the proper practice is to apply for such warrant to be issued under Article 27, Section 551 of the Annotated Code of Maryland (1957 Ed.). However, the search warrant statute just referred to is framed with a view to the detection of crime and as suggested in *Givner v. State*, 210 Md. 484, 124 A. 2d 764, there is serious doubt as to whether a search warrant is obtainable in Maryland except under a statute or to search for stolen goods or the like. This, of course, of itself, would not prove that a search warrant is unnecessary, but it does tend to support the rather restricted common law concept of the office of a search warrant which was probably in mind at the time of the adoption of the Federal constitutional provisions with regard to searches and seizures and search warrants. Even if a warrant were provided, in the overwhelming majority of instances it would be impossible for the health inspector to make any showing of probable cause. Therefore, the warrant would not be issued. This would have the practical effect of completely destroying the preventive powers of the Health departments.

Although the questions presented in this case have not been decided by this Court, but see *District of Columbia v. Little*, *supra*, similar cases have been before the State courts.

In Maryland, the Court of Appeals, in *Givner v. State*, 210 Md. 484, 124 A. 2d 764 (1956), held that the ordinances of Baltimore City which provided for inspections without

search warrants by the Health Department, Building Inspection Engineer and Fire Department of buildings for the purpose of performing their prescribed duties, were a valid exercise of the police power. The Court further held that the inspections were not unreasonable and hence were not unlawful; thus did not involve any violation of Article 26 of the Maryland Declaration of Rights (similar to the Fourth Amendment), nor the Fourteenth Amendment.

In South Carolina, the court in *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E. 2d 683 (1955), upheld the constitutionality of an ordinance (with exception of certain provisions not pertinent here) directed at the improvement of housing, although regarding the question of entry upon premises, the majority opinion stated:

> "* * * this question is not presented in this litigation because there has been no entrance of any premises by the director over the objection of the occupant. * * * It may be added that there is doubt whether such an entrance would come within the constitutional guaranties against unreasonable searches."

The court then referred to the divided opinions in the United States Court of Appeals and in this Court in the *Little* case, *supra*.

In Ohio, the Supreme Court in *State v. Price*, 168 Ohio St. 123, 151 N.E. 2d 523, held that inviolability of a homeowner's "castle" is subordinate to the general health and safety of the community where he lives. The court further held that the Dayton ordinance, authorizing housing inspectors to enter upon premises and examine the premises at any reasonable hour was not violative of the Ohio Constitution section prohibiting unreasonable searches.

A recent note in 72 Harvard Law Review (January 1959) 504 discusses Urban Renewals: Problems of Elimi-

nating and Preventing Urban Deterioration. The article indicates that the enforcement of housing codes as well as the establishment of substantive standards have presented considerable difficulty. The problem of inspections is discussed and at page 546 suggests that authorization by municipal housing codes of entry upon property for inspection without a warrant may be open to question under the Fourteenth Amendment and State constitutional guaranties against unreasonable search and seizure. The note suggests at page 546:

> "* * * It seems, however, that courts should uphold housing-code inspections without warrants on the ground that the applicable constitutional provision was intended to require a warrant — except in cases of overriding emergency — only when the search is conducted for the purpose of securing evidence of criminal guilt, and that although criminal convictions may, ultimately result from inspections, the correction of conditions constituting a continuing violation of the code rather than the discovery of past guilt is the primary purpose of such inspections. Moreover, to the extent that the requirement of a warrant is designed to prevent intrusion upon private property without probable cause to suspect guilt, there is less need for a warrant in cases involving housing-code inspections, the justification for which may be unrelated to suspicion of guilt. It has also been argued that although the interest in privacy may be the same regardless of the purpose of a particular search, the need to conduct routine housing inspections, in regard to which probable cause for the issuance of a warrant could not ordinarily be established, outweighs the interest in privacy. Under either theory, a search for inspection purposes should be deemed unreasonable only if conducted in an oppressive way."

We submit that on the facts, on the basis of the ordinance involved, in light of the established practices as to the en-

forcement of the ordinance in Baltimore and the necessity involved, the inspections are of a routine nature made at reasonable hours and are primarily for protective, not punitive, purposes. Such inspections it is submitted are not unreasonable and hence are not unlawful. Since they are not unlawful, they do not involve any violation of the Fourteenth Amendment.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court below should be affirmed.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 278

AARON D. FRANK,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

ON APPEAL FROM THE CRIMINAL COURT OF BALTIMORE
(MARYLAND)

BRIEF AMICI CURIAE OF THE MEMBER MUNICIPALITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 278

AARON D. FRANK,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

ON APPEAL FROM THE CRIMINAL COURT OF BALTIMORE (MARYLAND)

BRIEF AMICI CURIAE OF THE MEMBER MUNICIPALITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

Interest of Amici Curiae

The National Institute of Municipal Law Officers (NIMLO) is an organization composed of more than eleven hundred municipalities located in each of the 49 states, the District of Columbia, and the territories of Hawaii and Puerto Rico. Each member city acts through its chief

legal officer, known variously as City Attorney, City Solicitor, Corporation Counsel, Director of Law, etc.

This brief is filed pursuant to rule 42(4) of this Court. The members of NIMLO are political subdivisions of states, and this brief is sponsored by their authorized law officers.

The issue presented in this case is of vital interest not only to the city of Baltimore but to all municipalities which seek to prevent health and fire hazards and exercise other necessary police power functions under ordinances providing for reasonable inspections of private houses. The issue is also of vital interest to the millions of inhabitants of those municipalities whose life and health and property are protected by such inspections.

The members of NIMLO were represented by brief *amici curiae* and also in oral argument in the only other case presenting to this Court the issue of the constitutionality of municipal health inspection, *i.e., District of Columbia* v. *Little*, 399 U.S. 1 (constitutional issue not decided). It is because of the collective experience of the NIMLO municipalities with the necessity for reasonable inspection ordinances, and their awareness of the danger which is posed to the health and welfare of their respective communities by attempts such as this to invalidate those ordinances, that this brief *amici curiae* is filed.

Summary of Argument

The rights guaranteed by the Constitution are not absolute. In the case of the right to privacy under the Fourth Amendment, only *unreasonable* searches are prohibited. Whether a search is or is not "unreasonable" depends upon a balancing of all interests for and against allowing the search. In this case, the interest of all the people in guarding the public health and preventing the spread of

disease outweighs the interest of the individual householder in being free from the slight inconvenience caused by reasonable municipal health inspection. Health inspections are not unreasonable searches within the meaning of the fourth amendment.

ARGUMENT

I. Fourth Amendment Prohibits Only Searches Determined To Be Unreasonable After Consideration of All Interests

The freedoms of the Bill of Rights are not absolute. They are subject to reasonable limitations in the exercise of the police power of the state. *American Communications Asso.* v. *Douds*, 339 U.S. 382, 398-99. This Court has said:

> We have never held that such freedoms are absolute. The reason is plain. As Mr. Chief Justice Hughes put it, 'Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.' *Id.* at 399.

Moreover, the guarantee of individual freedom in the Fourth Amendment is by its language specifically qualified. It is not an absolute prohibition on searches of houses. It prohibits only "*unreasonable* searches." (Emphasis added.)

As pointed out in appellee's brief, *Br.* p. 20, and indeed in appellant's brief as well, *Br.* p. 29, the determination of whether health inspection under the Baltimore ordinance was an *unreasonable* search within the meaning of the Fourth Amendment will depend upon a balancing of interests between the right of an individual to privacy in his own home and the right of a municipality to guard the

health and welfare of all its people through the exercise of its police power. It is to this balancing of interests that the *amici curiae* wish to direct their argument. Because of the collective experience of the more than eleven hundred NIMLO member cities all over the nation in fire prevention and sanitation, the *amici curiae* feel particularly qualified to bring to the attention of this Court the gravity and importance of the public interest in the preservation of reasonable inspection ordinances.

II. Public Interest in Preservation of Health Inspections

Sanitary inspections cannot be made from a courthouse. It is not a question primarily of the inconvenience involved in procuring a warrant every time there is a complaint as to unsanitary conditions. The fact is that public health cannot be protected merely by following up warrantable complaints. The major public health and safety programs in this country are grounded on the concept that it is through prevention of conditions which result in health and safety hazards, and not in the punishment of violators, that the public welfare is best protected.

A reversal of the decision of the state court in this case would destroy the systems of preventive inspections now set up all over this country, and would make health officers mere process servers for the purpose of abating conditions which have already grown to the stature of public menace. Effective health and safety administration is not based upon complaints, but is the result of periodic scientific checks by trained inspectors to determine health and safety conditions. This is amply illustrated by the results of a test survey conducted by a grand jury in New York City convened to investigate hazardous and unsanitary conditions in housing. Surveyed by an inspection team were fifteen square blocks of housing in three representative

areas of Brooklyn, in which 567 housing division violations had been previously reported on complaint. The inspection survey revealed an actual total of 12,445 violations in the test area, many of them classed as "hazardous." Moreover, other New York City inspections indicated that this ratio was not out of line. GRAND JURY PRESENTMENT, "In the Matter of the Investigation of the Enforcement of Any and All Laws Concerning Hazardous and Unsanitary Conditions in Dwellings, etc.," Kings County Court, N.Y., pt. 1, pp. 6-8 (Jan. 28, 1953).

Only 567 violations on file prior to the test inspection as against 12,445 violations after the test! Can there be any doubt of the need for preventive inspections?

Interior inspections of private housing for fire hazards are regularly conducted in Baltimore under article 5, chapter 12 of that city's General Building Code. Similar programs of preventive inspection in countless other cities have drastically reduced fire hazards in this country. These inspections have been part of a scientific plan to educate the householder into avoiding catastrophe rather than confining municipal efforts to extinguishing fires after they have occurred.

There is the same need for inspection in connection with garbage and rodent nests, two of the greatest sources of the spread of disease in this country. If the health officers of all the cities of the country are to wait for the complaints of neighbors and then issue warrants predicated upon the information received, the effective work that is being done in preventing epidemics in this country will henceforth be curbed. For every neighbor who complains, there are hundreds who are unwilling to become involved in a backyard fight to preserve the health of the community, others who are phlegmatic to the danger, and still others who are joint offenders.

The annual report of the health department of the city of Cleveland for the year 1956 shows that in that city 36,081 housing sanitation inspections were made in a single year. The report of the health department of the city of Boston shows that in the same year 27,268 sanitation inspections were made in that city. In Detroit, according to the annual report of the department of health, 25,247 housing inspections were made in 1955. Municipalities maintain these inspection programs because their people feel they are necessary to protect the general health.

The municipalities of this nation spend $432,000,000 annually in refuse collection and removal. DEPT. COMM. BUR. CENSUS REP., "Summary of Governmental Finances," p. 30 (Aug. 24, 1958). It is not just the zeal to render a public service that impels cities to maintain these costly refuse removal systems. It is the recognition of the fact that the control of garbage is the primary step in the control of certain very serious diseases. For example, the danger of typhus, where the infection results from the bites of insects borne by rats, is tremendously increased where the garbage sanitation is not adequately controlled. The same danger exists where sanitation officers are not allowed to inspect dwellings such as appellant's for rodent infestation and other health hazards.

Possible rodent infestation in appellant's house is not appellant's business alone. Rats do not stay at home, nor do the disease germs which they spread. Fires ignited by safety hazards which might have been uncovered by municipal inspection spread to adjoining houses, and have been known to level entire city blocks. A man's home may be his castle, but that castle no longer sits on a hill surrounded by a moat. The modern "castle" is connected to a central water system, a sewage system, a garbage collection system, and frequently to the houses on either side.

The case of the open garbage can may not be as intriguing to students of constitutional law as a case involving freedom of speech and assembly, but the assemblage of rodents and germs can have equally far reaching effect. A colony of rats is capable of increasing at the rate of six percent per day. One germ, after thirty divisions, becomes one billion germs—a formidable armed enemy. This is not fanciful, but realistic. To municipal officers, in constant touch with health and safety problems, it is impossible to shrug off the very real dangers that lurk in the everyday problems of sanitation.

The practical administrative obstacles to operating inspection systems through warrants cannot be urged too strongly. It just cannot be done that way. Getting a warrant would be possible only in that portion of cases where complaints have been received or where a nuisance situation has reached the point where it can be seen and smelled from outside the building. Olfactory health control is no answer to the major health problems of this country. The violations that smell represent too small a portion of the whole. By the time putrefaction sets in, very valuable time has been lost and an emergency phase has begun. The whole public health program is predicated upon the basic principle that improper practices must be corrected and abated *before* they reach the stage of glaring danger.

If health inspection ordinances are invalidated, countless cases of defective household plumbing which inspections would discover will be permitted to continue uncorrected. Defective plumbing may cause back siphonage of sewage and other household wastes into the public water supply. The amoebic dysentery epidemic in Chicago in 1933, resulting in 100 deaths in over 1,000 known cases, was caused by just such a situation. *Amoebic Dysentery in Chicago*, 24 Am. J. Pub. Health 756 (1934). Water is

also a vehicle for the dreaded diseases of cholera and typhoid fever.

A logical extension of the invalidation of health inspection ordinances would prevent the effective checking of electrical work for fire hazards, or of hot air furnaces to determine whether proper combustion is achieved so as to prevent the escape of noxious gases. It is worth noting that about two years after the attempted inspection in *District of Columbia* v. *Little*, 339 U.S. 1, a fire gutted the home of the respondent and burned to death her two-year-old child. Washington Star, Aug. 6, 1949, p. A-20, col. 1; Aug. 7, 1949, p. A-7, col. 7. While the cause of the fire was reported as undetermined, the incident serves as a grim reminder of the kind of loss that can frequently be prevented by municipal inspection.

Field inspections also play a vital role in urban redevelopment and slum clearance. D. C. Dept. Licenses & Inspections Rep., "Housing Code Enforcement" (Dec. 24, 1958). Federal government statistics show that slums, which constitute only 20% of the total residential area of the average American city, produce 35% of all fires, 45% of major crimes, and 50% of disease. *Id.* at 23. In the landmark case of *Berman* v. *Parker*, 348 U.S. 26, 32, this Court recognized that:

> Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost intolerable burden.

III. Interest of Individual Householder In Absolute Privacy

The "reasonableness" of the search involved in this case depends upon a balancing of interests. It has been shown that the interest of the people—acting through

their agents, municipalities—in exercising police power through health and safety inspections is grave indeed. What are the interests of the individual householder in maintaining an absolute right of privacy in his home against such inspections?

It should be noted initially that most householders feel their interests lie in permitting such inspections, and welcome the periodic visits of municipal inspectors which they know can uncover hazards the correction of which may save their lives by stopping fire or disease. Yet what of a householder who, like appellant, feels differently? What are the dangers to such a householder if inspection is allowed?

Unlike the householders in *all* cases in this Court where searches have been declared unconstitutional, this householder is subject to no criminal prosecution. The inspecting official is not looking for evidence of a crime. Under the Baltimore city code, as under most inspection ordinances, if a health or safety hazard is found, the householder is merely notified to correct it and a penalty attaches only if he fails to comply. BALTIMORE, MD., HEALTH CODE, §§ 112, 114-15, *R.* p. 104. The result of the inspection is not that defendant is convicted of a crime because of discovered evidence, but that an unsafe condition in his home is corrected.

But what of the nuisance to the householder caused by inspections? There is no contention in the instant case that the householder was harrassed by repeated inspections, nor that the inspection in question was made at an inconvenient time of the day. Indeed, the ordinance under attack required that the inspection be made in the day time, and the particular inspection under attack was attempted to be made in the middle of the afternoon. There is no contention in the instant case that the inspect-

ing sanitarian had any motive other than the discovery of a possible health hazard. This is not the case of the knock on the door in the middle of the night, or even of interference with the family dinner hour. The rule of reasonableness which has been developed in cases passing upon due process of law (and which is specifically incorporated in the language of the Fourth Amendment forbidding only *unreasonable* searches) is always a protection against the capricious action of government officials. It cannot be doubted that abuses of the health and safety inspection ordinances could be remedied if they should transpire.

IV. Balancing of Interests

When the interests are balanced, then, the scales are grossly uneven. In order to preserve the nebulous private right of the appellant and a few others like him, this Court is asked to jeopardize the lives and health of millions of city residents the nation over. One death from fire or disease originating in a filth strewn cellar should be sufficient to tip the scales, but in fact thousands of such deaths are a realistic possibility.

It is not to be denied that the fundamental purpose of the Fourth Amendment was to secure privacy in the home. However, it must also be remembered that under the police power there is lawful interference in many instances with the liberty of individuals, their right to move around and their right to use their property. Individual freedom must yield in some cases to the enforcement of reasonable regulations for the public welfare. The right of privacy in the home should not give the right to refuse entry to a health inspector any more than the right of free speech gives the right falsely to shout "fire" in a theater, *Schenck v. United States*, 249 U.S. 47, 52, or the right of freedom

of religion gives the right to offer a human sacrifice, *Reynolds* v. *United States,* 98 U.S. 145, 166.

Where public health is at stake, this Court has sanctioned, as against constitutional objection based on individual rights, the power of the government summarily to enter premises and seize and destroy putrid food, *North American Cold Storage Co.* v. *Chicago,* 211 U.S. 306, and the power to provide for compulsory vaccination, *Jacobson* v. *Massachusetts,* 197 U.S. 11. Indeed, in affirming the power of a municipality to regulate refuse removal, this Court in *California Reduction Co.* v. *Sanitary Reduction Works,* 199 U.S. 306 has noted *obiter* the very issue involved in this case:

> The householder may be compelled to submit even to an *inspection of his premises,* at his own expense, and forbidden to keep them [garbage and refuse material], or allow them to be kept, in such condition as to create disease. *Id.* at 321-22 (Emphasis added.)

Conclusion

No one who loves America and the freedom for which America stands wants to see any of the individual rights guaranteed by the Constitution weakened in any way. This brief is not submitted with a desire to weaken individual rights, but in an attempt to put our constitutionally guaranteed rights in a proper perspective. It is earnestly submitted that it was never the intended purpose of the Fourth Amendment to prevent reasonable health inspections, and it should not be expanded to that point. It has been the vigilance of public health officers and their well-integrated programs that have saved this country from some of the epidemics, scourges and health menaces that would inevitably have occurred. To confine health inspections to instances where there is cause for issuance of a warrant

would be to deal a crippling blow to these sanitation programs. The decision of the court below should be affirmed.

Respectfully submitted,

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ON APPEAL FROM THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PETITION FOR REHEARING

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PETITION FOR REHEARING

Now comes the appellant, Aaron D. Frank, and respectfully prays the Court to grant rehearing in this cause.

In this appeal, appellant sought to set aside, as a violation of the Fourth and Fourteenth Amendments, his conviction by the Criminal Court of Baltimore, Maryland for refusing entry to his home to a health inspector without a warrant who sought to search the dwelling for suspected rat infestation. The Court upheld the conviction, four justices dissenting. Appellant respectfully submits that several of the grounds for affirmance assigned by the Court (slip opinion, No. 278) do not sustain the result reached.

I.

The Court appears to rest its affirmance, in some important part, on Maryland history as evidenced by early Maryland legislation said to support entry without a warrant. But, appellant submits, the statutes referred to (slip opinion, No. 278, pp. 7-9, n. 5, 6, 9-11) did not, in the main, authorize or permit officers to enter generally the private homes of citizens, as does the ordinance attacked in this cause. Insofar as they purported to empower officials to enter *homes*, as distinguished from ships, carriages, shops or stores (all of which have a public or quasi-public nature), the early enactments were strictly limited in scope. Where they sought to permit entry into houses, it was ordinarily in relation to their use or occupancy in some special capacity, apart from their use as homes or dwelling places. The power to demand entry was directed not at dwellings *qua* dwellings, as is the health code provision here assailed, but at aspects of their use other than as homes.

Thus, *e.g.*, Maryland Laws, May 1756, p. 5, section XLVI, referred to by the Court (slip opinion, No. 278, p. 8, n. 6), empowered collectors of a tax imposed on certain spirituous beverages "which shall be retailed, or sold" (Maryland Laws, May 1756, p. 5, section XL) to "enter the House, Cellar, Vault, Store, or other Room *of such Retailer*, in the Day Time, to Gauge all the Vessels and Liquors aforesaid" and imposed sanctions if "*any such Retailer* shall refuse to permit any such Collector, or their Deputy, to enter as aforesaid, to Gauge or take Account of the Liquors aforesaid". (Emphasis added.)

Similarly, Maryland Laws, November 1789, c. VIII, section 5, described by the Court as "(t)ypical of the regulatory statutes enacted in this period" (slip opinion, No. 278, p. 9), imposed a monetary penalty on "any baker, or other

person" who "shall refuse to suffer the clerk of the market, . . . to enter his house, or other suspected place, to examine and weigh his bread". But the power to enter could have been no broader than the scope of the statute itself, which charged the appropriate officials "to set, ascertain and appoint, in any place or places within their respective jurisdictions, the assize and weight of the several sorts of bread following, *which shall in such place or places be made for sale, sold or exposed to sale*, and the price to be paid for the same" (*Id.*, section I; emphasis added).

The one enactment extended only to the houses of retailers of certain liquors, the other to those of sellers of certain bread. Each obviously dealt with an activity of a public nature and permitted entry not to the homes of all, but only to the home of the person engaged in that activity. The inference that the power of entry was intimately connected with the use of the house in the particular public pursuit, and not with its use as a home, is irresistible. The early legislation went no farther. The antecedent of the Baltimore health code provision attacked in this cause thus did, in its inception in 1801, invoke "novel or untried procedures" (slip opinion, No. 278, p. 9) in that private homes, as such, not affected with any public use, were by its terms laid open to invasion by officials without warrants. The early Maryland legislation did not afford any "historic sanctions" (slip opinion, No. 278, p. 13) for such invasion.

II.

The Court refers twice (slip opinion, No. 278, pp. 7, 13) to the fact that the ordinance and procedures here attacked do not authorize intrusion by the officer over the householder's refusal of entry, although the ordinance does impose a fine for such refusal. Surely the power to fine,

coupled with the ability to make repeated requests to enter, each refusal punishable by a fine, comprise as substantial and effective a means "to force entry" (slip opinion, No. 278, p. 7) as actual application of physical force "to break past the unwilling occupant" (*Id.*).

III.

That "pervasive breakdown in the fibre of a people which is produced by slums and the absence of the barest essentials of civilized living" (slip opinion, No. 278, p. 11), postulated by the Court as an effect of requiring that sanitary inspectors defer to the same constitutional safeguards as any other law enforcement officers, is not more to be feared than that suffocation of the spirit of a people which is the inevitable concomittant of their subjection to the procedures of a police state. Not even the shortest step along that way should be condoned by the Court. No man should be required to bend the knee to the arbitrary demand of any government enforcement officer, acting on his own.

IV.

That protestants against unwarranted searches may be few, or that "dominant public opinion" (slip opinion, No. 278, p. 12) may sanction such procedures, would scarcely seem conclusive considerations.[1] Constitutional right, except perhaps in its initial acceptance by the people as a vital part of our governmental structure, has never been thought to depend upon evanescent popular acclaim. Whether "an insignificant few" (slip opinion, No. 278, p. 12), or the whole citizenry, seek to assert the right does not affect its existence or validity. All tyranny, perhaps, begins with

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[1] *Non enim numero haec judicantur, sed pondere* [Not number, but weight is our test in these matters]. — Cicero, *De Officiis*, II., 22, 79.

inconsequential seeming encroachment on the rights of an unimportant minority, but too often ends with entire deprivation of the liberties of all.

This petition for rehearing should be granted and this cause should be set down for reargument on the regular calendar.

Respectfully submitted,

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I certify that this petition is presented in good faith and not for delay.

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